

December 21, 2009. The employing establishment controverted the claim; the form contained a statement from appellant's coworker, Edward R. McBride, who asserted that appellant never mentioned to him that she sustained an injury during the time he worked with her on December 21, 2009.

In a December 28, 2009 statement, appellant asserted that on Monday, December 21, 2009 at 3:45 p.m. she was working at a busy window selling holiday postage when she ran out of receipt paper. She walked to a supply cabinet, in which the paper was stored very low to the floor and in the back. Appellant stated that she needed to get down on her hands and knees and reach into the back of the cabinet in order to reach the paper. She asserted that, as she reached for the paper, she bumped and twisted her knee. In addition, she stated that, as she was reaching for the paper her postmaster, Joseph Tadley, walked past her on his way to the exit. Appellant asserted that Mr. Tadley nearly had to walk over her because she was blocking his way; this caused her to shift her weight. She asserted that she then asked him if he was trying to kill her. When appellant stood up and returned to work she began to experienced pain up and down her leg, in her lower back, down her left side and her left knee began to swell.

The next day, December 22, 2009, appellant called in sick, informing the employing establishment that she was experiencing severe pain in her lower back and left leg. She stated that she scheduled an appointment with a physician at the earliest possible date, Wednesday December 23, 2009. The physician advised her that she had fluid in her left knee and that it was in a state of trauma. He recommended that she consult an orthopedic specialist and that she stay off work to get treatment for her left knee. Appellant was examined by Dr. Thomas P. Obade, Board-certified in orthopedic surgery, on December 30, 2009 and told him that her knee injury was caused by her December 21, 2009 work incident. She stated that she did not realize the extent of the injury until the next day, when her leg started to swell with fluid and she began to experience severe leg and back pain.

In a statement received by OWCP on January 5, 2010, appellant's postmaster, Mr. Tadley, asserted that the first notice the employing establishment received from her that she had sustained an injury on December 21, 2009 was on December 22, 2009, at 7:15 a.m., when she telephoned Coworker Mary Cobb and told her that she was experiencing significant back pain. He stated that she called the employing establishment on the same date and told them that she had scheduled a doctor's appointment for Wednesday, December 23, 2009. Mr. Tadley asserted that the first time appellant indicated she had sustained a knee injury on December 21, 2009 was on December 23, 2009, when she again telephoned Ms. Cobb and told her that she now had a knee problem, for which she might require surgery. Appellant also spoke with Mr. Tadley on that date, informing him that he she had scheduled an appointment with an orthopedic physician for December 31, 2009; she further informed him that her primary physician was keeping her off work until she consulted an orthopedic specialist.

Mr. Tadley expressed his disagreement with appellant's account of the December 21, 2009 work incident. He stated that Employee McBride witnessed appellant's activities on that date and asserted in his statement that she never mentioned to him that she had been injured. Mr. Tadley remembered that appellant was kneeling to retrieve paper from the cabinet on December 21, 2009 but denied that he stepped over her and caused her to shift her weight. He asserted that he stayed in his office until she went back to her terminal, then went back to the

cabinet and restocked it with paper. Mr. Tadley further advised that appellant processed 13 transactions between 3:30 p.m. and 4:00 p.m. He asserted that appellant did not indicate either physically or verbally that she twisted or banged her knee at that time.

In a report dated December 30, 2000, Dr. Obade related that appellant told her that she was on her hands and knees on December 21, 2009, trying to obtain paper in the low shelf of a cabinet and that she crawled underneath the shelf when a coworker tried to walk around her; she twisted her knee and hit her knee at the same time, causing immediate pain. Although appellant continued to work throughout the day, she began to experience increased swelling in her left knee. Dr. Obade stated that appellant denied any prior traumatic knee injury or experiencing any symptoms of knee pain or swelling to the December 21, 2009 work incident. He stated, however, that she underwent x-rays which showed significant arthritis in her left knee.

In a treatment note dated December 23, 2009, received by OWCP on February 1, 2010, Dr. Robert M. Williams, Board-certified in sports medicine, stated that he examined appellant for a left knee injury and degenerative joint disease. He stated that she would be incapacitated for duty until further notice.

By letter dated February 2, 2010, OWCP advised appellant that she needed to submit additional factual and medical evidence in support of her claim. It stated that she had 30 days to submit the requested information.

In a statement dated February 22, 2010, appellant responded to Mr. Tadley's statement. She acknowledged that she called Ms. Cobb at work on the morning of December 22, 2009 and told her that she would be on sick leave due to back pain. Appellant asserted that she stated to Ms. Cobb that her back was killing her and that the pain was going down her leg into her knee; she stated that her entire left side from her lower back to her knee was in pain. She stated that she was not able to ascertain that the pain was stemming from her knee until the swelling and pain became more and more severe throughout the day. At that point she called her primary physician, Dr. Williams, and made an appointment for the following day and underwent x-ray testing. Appellant then informed the employing establishment that she had injured her left knee on December 21, 2009. She stated that when she asked Mr. Tadley if he remembered the December 21, 2009 work incident and her comment asking whether she was trying to kill her while he was trying to pass her, he stated that he did remember. He also stated that he did not believe she was injured because she returned to work.

Appellant further stated that Mr. McBride was only present for 15 more minutes after the December 21, 2009 incident occurred; the incident took place at 3:45 p.m. and he left work at 4:00 p.m. In addition, she stated that Mr. McBride was closing his window and counting his money at the time. Appellant also stated that Dr. Obade told her that she sprained her left knee as a direct result of the December 21, 2009 work incident, which aggravated her degenerative joint disease. He scheduled her to undergo knee surgery on March 15, 2010.

In a February 24, 2009 report, Dr. Williams stated that appellant injured her left knee on December 21, 2009 when she went down to her knees to retrieve a paper that had fallen behind a cabinet. He related that as she knelt on the floor she hit her left knee on the tile floor. As appellant was on the floor reaching behind the cabinet her supervisor approached so she moved to allow

more room for him to get by. Dr. Williams stated that when she got to her feet she twisted her left knee as she put weight on her left leg. While appellant experienced some pain initially but she did not express it. The pain worsened over the next hour and half while she was alone at the employing establishment. Dr. Williams stated that when appellant returned to work the next morning her knee was swollen, with pain going up and down her leg and into her back.

Dr. Williams stated that after his evaluation of appellant on December 23, 2010 he diagnosed a possible tear of the left medial meniscus and degenerative joint disease of the left knee, as shown by x-rays. He opined that the knee sprain or meniscus tear was probably caused by the twisting nature of the December 21, 2009 work injury; the arthritic condition was not related to the injury but was probably aggravated by the new injury to her left knee.

By decision dated March 8, 2010, OWCP denied the claim, finding that appellant had failed to meet her burden to establish fact of injury.

In a Form CA-16 dated January 6, 2010, received by OWCP on March 16, 2010, Dr. Obade indicated that appellant injured her left knee on December 21, 2009 while on the floor while kneeling down to retrieve paper, then twisted her knee while standing up. He further stated that she was crawling on her hands and knees reaching for paper on the low shelf of the cabinet when a coworker tried to walk around, resulting in her twisting her left knee.

In a July 26, 2010 report, Dr. Obade stated that appellant injured her left knee on the job on December 21, 2009. He provided a slightly revised account of how the injury occurred, stating that she was crawling underneath a shelf when a coworker tried to walk around her, resulting in her twisting and hitting her knee at the same time, which caused immediate pain and swelling within a few hours of the incident. Dr. Obade stated that appellant injured her back at the time of the incident but that the back symptoms subsided over the next few days, with the knee pain becoming her dominant problem. He performed left knee surgery on March 15, 2010, a procedure which involved an arthroscopic medial and lateral meniscectomy, chondroplasty of the medial femoral condyle and patella synovectomy including resection of the medial synovial pipe of the left knee. Dr. Obade stated that appellant's left knee was essentially asymptomatic until the December 21, 2009 work incident. He opined that her current problems, including the total knee arthroplasty, were directly related to the December 21, 2009 accident.

By letter dated September 13, 2010, appellant, through her attorney, requested reconsideration.

In a statement dated September 17, 2010, received by OWCP on October 12, 2010, appellant essentially reiterated her previous allegations and contentions.

By decision dated December 10, 2010, OWCP denied modification of the March 8, 2010 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

OWCP cannot accept fact of injury if there are such inconsistencies in the evidence as to seriously question whether the specific event or incident occurred at the time, place and in the manner alleged or whether the alleged injury was in the performance of duty⁷ nor can it find fact of injury if the evidence fails to establish that the employee sustained an “injury” within the meaning of FECA. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee’s statements must be consistent with surrounding facts and circumstances and her subsequent course of action.⁸ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee’s statements in determining whether he or she has established his or her claim.⁹

² 5 U.S.C. § 8101 *et seq.*

³ *Joe D. Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(e).

⁷ *Pendleton*, *see supra* note 3.

⁸ *See Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995); *Joseph H. Surgener*, 42 ECAB 541, 547 (1991).

⁹ *See Constance G. Patterson*, 42 ECAB 206 (1989).

ANALYSIS

In this case, appellant has not established fact of injury because of inconsistencies in the evidence that cast serious doubt as to whether the specific event or incident occurred at the time, place and in the manner alleged. She did establish that an incident occurred on December 21, 2009, that she did kneel on the floor, reaching into the cabinet for paper. However, appellant has not met her burden to establish that she twisted her left knee during this incident. She stated on her December 28, 2009 CA-1 form that she injured her left knee on December 21, 2009. Appellant explained in her December 28, 2009 statement that she bumped and twisted her knee while on her hands and knees, reaching into the back of a supply cabinet for paper. She asserted that while she was reaching into the cabinet Mr. Tadley nearly walked over her, which caused her to shift her weight. Mr. Tadley denied stepping over appellant on his way to the building exit. In addition, although appellant stated in her December 28, 2009 statement that she sustained her knee injury while on the floor reaching into the cabinet for paper, when she bumped and twisted her knee. Subsequently, however, she provided a different account to Dr. Obade, stating that she was crawling underneath a shelf when a coworker tried to walk around her, resulting in her twisting and hitting her knee at the same time, which caused immediate pain and swelling within a few hours of the incident.

While appellant did call in sick on the following day, December 22, 2009, she told Ms. Cobb that she could not work because she was experiencing severe back pain.¹⁰ She did not indicate that she experienced left knee pain as a result of the December 21, 2009 incident until December 23, 2009. In appellant's December 28, 2009 statement, she acknowledged that she told Ms. Cobb on December 22, 2009 that she was experiencing back pain. She explained that after she stood up from reaching into the cabinet while on her hands and knees, she returned to work and began to experience pain up and down her leg, in her lower back, down her left side and her left knee began to swell. While Dr. Obade related in his December 30, 2009, January and July 2010 reports that appellant told him that her knee injury was caused by her December 21, 2009 work incident, he stated that she did not realize the extent of the injury until the next day, when her leg started to swell with fluid and she began to experience severe leg and back pain. Further, Dr. Williams stated in his February 24, 2010 report that appellant had swelling and pain in her left knee when she returned to work on the day after the December 21, 2009 incident. This contradicts the statements by Dr. Williams, appellant, Mr. Tadley and Ms. Cobb that appellant was not at work from at least December 22 through 30, 2009. Finally, as noted above, appellant only mentioned to Ms. Cobb that she was experiencing back pain during the December 22, 2009 sick call; Ms. Cobb did not indicate that she reported a left knee injury at that time.

Based on the instant record, therefore, there are discrepancies in the accounts of injury appellant provided to different people. This contradictory evidence created an uncertainty as to the time, place and in the manner in which appellant sustained her alleged left knee injury. Appellant allegedly injured her left knee during the December 21, 2009 work incident, but did not provide

¹⁰ The evidence submitted by an employing establishment on the basis of their records will prevail over the assertions from the claimant unless such assertions are supported by documentary evidence. *See generally Sue A. Sedgwick*, 45 ECAB 211, 218 n.4 (1993); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computation of Compensation*, Chapter 2.900(b)(3) (September 1990).

notification to the employing establishment for three days, after initially advising that she had only injured her back during the incident.¹¹ Dr. Obade stated that appellant injured her back at the time of the incident but that the back symptoms subsided over the next few days, with the knee pain becoming her dominant problem. It is, therefore, unclear if the physicians of record had an accurate history of the December 21, 2009 incident as they related differing accounts of how the knee injury allegedly occurred and did not indicate an awareness that appellant had initially complained of a back injury stemming from the December 21, 2009 incident.¹² Furthermore, the form reports from Dr. Obade that support causal relationship with a checkmark are insufficient to establish the claim, as the Board has held that without further explanation or rationale, a checked box is not sufficient to establish causation.¹³

Lastly, appellant failed to submit to OWCP a corroborating witness statement in response to OWCP's request. This casts additional doubt on appellant's assertion that she injured her left knee while kneeling on her hands and knees, reaching for paper inside a cabinet on December 21, 2009. OWCP requested that appellant submit additional factual and medical evidence explaining how she injured her left knee on the date in question. Appellant failed to submit such evidence. Therefore, given the inconsistencies in the evidence regarding how appellant sustained her injury, the Board finds that there is insufficient evidence to establish that she sustained an injury in the performance of duty as alleged.¹⁴

Appellant's attorney contends in his brief to the Board that appellant has provided sufficient factual evidence to establish that she sustained a traumatic injury on December 21, 2009. He asserts that the record contains several statements confirming that she knelt down on the floor to retrieve paper from a low lying cabinet and banged and twisted her left knee on that date. In addition, counsel states that the physicians of record have provided sufficient medical opinion to establish that a left knee condition was caused and/or aggravated by the December 21, 2009 work incident. For the reasons stated above, the Board finds that appellant did not meet her burden of proof to establish fact of injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly found that appellant failed to meet her burden of proof to establish that she sustained a left knee injury in the performance of duty on December 21, 2009.

¹¹ *Id.*

¹² See *Geraldine H. Johnson*, 44 ECAB 745 (1993).

¹³ *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

¹⁴ See *Mary Joan Coppolino*, 43 ECAB 988 (1992) (where the Board found that discrepancies and inconsistencies in appellant's statements describing the injury created serious doubts that the injury was sustained in the performance of duty).

ORDER

IT IS HEREBY ORDERED THAT the December 10, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 1, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board