

stated, "I was involved in a violent PT take down. I slammed into PT & we fell onto the bed where PT landed on my left arm."

By letter dated December 9, 2009, the employing establishment controverted the claim based on telephone contact with Denise Santoni, a manager. It related that Ms. Santoni was present during the December 4, 2009 incident with the patient but that appellant did not inform her of any injury. Appellant missed work on December 5 and 6, 2009 and filed her traumatic injury claim on December 7, 2009. The employing establishment stated, "Upon hearing this, staff members who were actually involved contacted their nurse manager and are preparing statements asserting appellant has falsely embellished her participation and a resulting new injury."

In a December 8, 2009 clinic note, a nurse noted that appellant complained of pain in her neck and shoulders after a patient weighting 300 pounds fell on her left arm "during restraint." In a report dated December 9, 2009, Dr. Lisa M. Maddox, who specializes in family practice, discussed appellant's history of an injury two days prior when she was helping to subdue a patient. She diagnosed a sacral/coccygeal contusion.

In a December 18, 2009 electronic mail message, Ms. Santoni related that on December 4, 2009 the police were summoned to assist with a belligerent patient who weighed 282 pounds. Appellant and another nurse, Sara Baldwin, "entered the room to place the restraints on the bed." She spoke with Ms. Santoni after the incident but did not mention an injury. Ms. Baldwin told Ms. Santoni that appellant "was not directly involved in the take down of the [patient]."

On December 28, 2009 the employing establishment again controverted appellant's claim based on Ms. Santoni's statement that she had no direct involvement in the patient's containment. On January 19, 2010 the employing establishment noted that Ms. Santoni provided differing accounts of the incident to her physicians.

In a statement dated January 12, 2010, appellant related that on December 4, 2009 an angry patient began to hit and kick the walls. The police entered the room and touched him, at which time he became "extremely aggressive." Appellant and other female staff watched from the hall. She stated:

"With the three police officers and one of the male staff members attempting to restrain the patient, the patient charged forward in an attempt to exit the quiet room, moving towards the quiet room door and the other male staff member who was blocking it. At this time, myself and two other female staff members whom had been standing in the hallway watching, entered the quiet room. Entering first, I threw my body weight towards patient's charge in the hope that the one male staff member would not take the full weight of those coming at him towards the door and to assist in blocking patient's attempts to enter dayroom. I attempted to help restrain patient's swinging fists to protect those involved from being struck. Police officers and staff members, including myself, continued to attempt to contain the patient, whom continued to wrestle violently against officers and staff. Despite attempts, officers and staff were initially unable to lower the patient to the

bed. Finally, officers and staff were able to throw patient off-balance and all those in contact with the patient fell onto the bed with him, the patient landing face down, with my left arm pinned between the patient's upper body and the bed."

Appellant related that she held her right leg in the side of the patient's chest to assist a police officer. She also helped pull him to the top of the bed to get him in restraints and put her leg on his chest while an officer applied restraints. After the incident, appellant felt some aches and twinges but did not believe that she had sustained a serious injury.²

In a statement dated January 18, 2010, Joseph Davenport, a nurse, related that he was part of the staff restraining the patient on December 4, 2009. He stated:

"[Appellant] wrote a description of the events and her account pretty well matches with my own recollection of the events that occurred during the take down and application of restraints to a very angry, agitated and aggressive patient. I hereby attest to the fact that [appellant] was part of this take-down and her account is truthful and factual to the best of my knowledge."

By decision dated January 26, 2010, OWCP denied appellant's claim on the grounds that she did not establish that the December 4, 2009 incident occurred at the time, place and in the manner alleged.

On February 8, 2010 Joan Schaub, a nurse and manager, asserted that appellant's account of the events of December 4, 2009 was embellished and fanciful. She maintained that only police officers and male nurses took down the patient.

In an electronic mail message dated January 25, 2010, received by OWCP on February 16, 2010, Mr. Davenport related that he was one of the nurses who took down the patient on December 4, 2009. He stated:

"I do not recall seeing [appellant] throw herself at the vet[eran] nor do I recall noting her being pinned under him. I was involved with holding down his leg and securing the restraint and was not really seeing [her] every move; I [am] not refusing any of [her] claims, but I cannot really corroborate every detail of her story, as things were happening fast and I was occupied with [the veteran] at the time."

In another January 25, 2010 electronic mail message, Ms. Baldwin related, "While in the nursing station I observed on our camera the taking down of [the] veteran to the bed. I did not see [appellant] in the room while observing the camera. [Appellant] may have gotten involved once the veteran was taken down to the bed but I did [not] observe after that."

² On January 12, 2010 Jennifer Baker signed the bottom of appellant's statement and related that she agreed with the contents.

In a January 26, 2010 electronic mail message, Michael C. Sparks related that after the patient “shoved an officer we then took him down to the bed. We had him lying on the bed, held by three officers then several staff members entered the room to secure the restraints. The patient continued to struggle but was held by one officer on each arm and one on his legs. I cannot recall how many staff members then entered the room or their individual parts in this incident.”³

On April 15, 2010 appellant requested reconsideration.⁴ She related that after the altercation with the patient on December 4, 2009 she experienced aches but did not believe that she had sustained a serious injury. Appellant experienced increased pain and stiffness of her neck, upper back and shoulders during the evening. She telephoned a supervisor on December 5, 2009 and reported that she had injured herself on December 4, 2009. Appellant noted that the scene was chaotic during the incident with the patient on December 4, 2009 and maintained that the witness statements did not substantially differ from her account of the incident. She acknowledged that the police officers and male nurses took the front line but stated:

“However, I and others were directly involved in the control and containment of this individual as the event progressed. In fact, there were somewhere between 8 to 10 people in the room attempting to hold the patient down and apply the restraints. Although my perspective of the incident may vary slightly from others’ perspectives and recall, I do not see where any of the witness denies my direct involvement, as the agency asserts. Others may have had a greater degree of physical involvement, but no one has stated that I did not have a significant degree of physical involvement and contact during this incidence.”

On May 13, 2010 Ms. Schaub maintained that appellant no longer alleged that she was directly involved in taking down the patient. She asserted that police officers and two male nurses did most of the physical work and that appellant did not have “intense involvement.” Ms. Schaub described appellant’s preexisting back conditions. She concluded, “While [appellant] was present during the December 4, 2009 work incident and involved during a portion of the patient incident, it would be practically impossible and/or highly unlikely the condition claimed is related.”

On June 2, 2010 appellant noted that the employing establishment agreed that she was involved and related:

“With the five males in the room attempting to secure a firm hold on the patient is when the patient was coming forward toward the door. At that point, I and two other female employees Jennifer Baker, NA & Stephanie Tharp, NA) entered the room to assist in blocking the patient from trying to leave the room and assist as needed. I was grabbing at the patient’s arm as he was coming forward toward the

³ In a statement dated January 28, 2010, Ms. Santoni related that Daniel Gagner, a nurse, denied appellant instructed him where to place the intravenous medication.

⁴ On April 9, 2010, Dr. Oliver S. Thresher, Jr., related that appellant injured her cervical and thoracic spine on December 4, 2009 during an altercation with a patient on December 4, 2009.

door, he was swinging his fists. It was at this point, the male staff was able to firmly secure a hold on the patient and the patient was taken down to the bed. I, as well, as many other went down with the patient. As we went down, my left arm was under the patient. At this point, I was literally lying across the patient's back, the patient was face down. I had my upper body weight on the patient in attempt to control him. My left arm was under the patient. The patient continued to struggle and thrash about to free himself this entire time. After the patient was down and staff repositioned themselves in order to turn the patient over on to his back. I continued to attempt to hold the patient's upper chest and shoulders area. As staff rolled the patient over onto his back, I was able to pull my arm free from under the patient. At that point, I position myself to hold the patient's right arm and upper torso area. We pulled the patient toward the head of the bed. Restraints were applied and IM medication was given. We continued to hold the patient through this entire process as he resisted throughout the entire time. If one understands a patient take down and control, you recognize it is not one isolated event, but it is a series on ongoing continuous activity, lasting five to ten minutes in duration."

By decision dated July 21, 2010, OWCP denied modification of its January 26, 2010 decision. It found that appellant had not submitted sufficient evidence to establish the occurrence of the December 4, 2009 work incident, as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of establishing 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 filed within the applicable time limitation; that an injury was sustained while 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.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁸ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁹ An employee may establish that the employment incident

⁵ *Supra* note 1.

⁶ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁷ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁸ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁹ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.¹⁰

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.¹¹ An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.¹² An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹³ 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, if otherwise unexplained, cast doubt on an employee's statements in determining whether a *prima facie* case has been established.¹⁴ However, an employee's statement regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong or persuasive evidence.¹⁵

ANALYSIS

OWCP denied appellant's claim based on its finding that she did not establish the occurrence of the December 4, 2009 work incident. Appellant maintained that she injured her neck and back when she tried to prevent a patient from leaving a quiet room. She asserted that her left arm was pinned under the patient when she assisted police officers and other staff members placing the patient on the bed and in restraints. Appellant further maintained that she held the patient's chest down while helping an officer restrain the patient, pulled him toward the head of the bed and assisted subduing him during the application of restraints. She related that she experienced some achiness after the incident but did not believe that she was seriously injured.

The employing establishment controverted the claim, arguing that appellant had embellished the extent of her involvement in subduing the patient. It submitted statements that it contended supported that she had no direct involvement with the incident. In a statement dated December 18, 2009, Ms. Santoni related that she spoke with Ms. Baldwin and that she denied that appellant was directly involved with subduing the patient. Appellant further did not

¹⁰ *Id.*

¹¹ See *Louise F. Garnett*, 47 ECAB 639 (1996).

¹² See *Betty J. Smith*, 54 ECAB 174 (2002).

¹³ *Id.*

¹⁴ *Linda S. Christian*, 46 ECAB 598 (1995).

¹⁵ *Gregory J. Reser*, 57 ECAB 277 (2005).

immediately notify Ms. Santoni that she was injured. On January 25, 2010 Ms. Baldwin related that she watched part of the incident on camera but did not see appellant during the initial taking down of the patient onto the bed. She acknowledged that appellant may have gotten involved after she stopped watching the camera. Mr. Sparks related that after the patient was on the bed staff members came into the room to help with the restraints. He did not remember the actions taken by specific individuals.

The Board finds that the evidence is sufficient to establish that appellant experienced the December 4, 2009 work incident at the time, place and in the manner alleged. Appellant stopped work on December 5, 2009 and advised the employing establishment of her injury. She filed her traumatic injury claim and sought medical treatment within three days of the incident. Appellant provided a sufficiently consistent history of injury to her physicians and to OWCP. An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.¹⁶ Not only is there no strong evidence contradicting appellant's statement regarding how the incident occurred, there is considerable evidence supporting her statement. The employing establishment did not dispute that she was present during the December 4, 2009 altercation with the patient or that she provided some assistance in subduing him. Mr. Davenport, who was present at the December 4, 2009 altercation with the patient, concurred with her version of events although he could not fully corroborate that she was pinned under the patient or threw herself at the patient. Under the circumstances of this case, the Board finds that appellant's allegations have not been refuted by strong or persuasive evidence and that there are no inconsistencies sufficient to cast serious doubt on her version of the employment incident.¹⁷ Consequently, appellant has established the occurrence of the December 4, 2009 work incident.

As OWCP denied appellant's claim on the grounds that she did not establish the occurrence of an employment incident on December 4, 2009, it did not consider the medical evidence. The case will be remanded to OWCP for evaluation of the medical evidence to determine whether she sustained a medical condition and disability due to the accepted December 4, 2009 work incident. After such further development as it deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

¹⁶ See *Allen C. Hundley*, 53 ECAB 551 (2002).

¹⁷ See *M.H.*, 59 ECAB 461 (2008).

ORDER

IT IS HEREBY ORDERED THAT the July 21, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 5, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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