

**United States Department of Labor
Employees' Compensation Appeals Board**

D.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Peekskill, NY, Employer**

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**Docket No. 11-557
Issued: September 22, 2011**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 3, 2011 appellant filed a timely appeal from the December 20, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a traumatic injury while in the performance of duty on January 23, 2010.

FACTUAL HISTORY

On February 12, 2010 appellant, a 57-year-old clerk, filed a traumatic injury claim alleging that, on January 23, 2010, she sustained an injury to her right knee in the performance of

¹ 5 U.S.C. § 8101 *et seq.*

duty when the folding table at which she was working collapsed. She stated that she was forced to use her right knee to support the falling table, which was covered with mail.

The employing establishment controverted the claim. Supervisor Amber Kaiser stated that, on the date in question, she witnessed appellant holding the work table up by her right hand while indicating that it was collapsing. Coworker Linda Aldl and Ms. Kaiser grabbed and adjusted the table to a locked position. The supervisor reportedly did not see the table touching appellant's leg, nor did appellant indicate that the table touched or injured her knee.

In a January 30, 2010 emergency room report, Dr. Dulayak Santikul, a treating physician, diagnosed right knee pain. He indicated that appellant had experienced knee pain and swelling for three weeks. Dr. Santikul noted her belief that her right knee pain resulted from compensating for her chronic left ankle pain.

In a February 1, 2010 report of a workers' compensation injury from the Crystal Run HealthCare, appellant stated that her right knee was swollen and painful, noting that a table had collapsed and she was holding it with her right hand and leg.

Appellant was treated by Dr. Christopher Inzerillo, of Crystal Run Healthcare. On March 15, 2010 Dr. Inzerillo indicated that she sustained a right knee injury when a heavy table fell on her at work and she twisted her knee. He assessed acute knee pain and low back pain. In a March 18, 2010 attending physician's report, Dr. Inzerillo diagnosed sciatica, possible meniscal tear and knee effusion. His history of injury reflected that a heavy table fell on appellant's leg at work on January 23, 2010 and indicated by placing a checkmark in the "yes" box his belief that the diagnosed condition was due to the employment activity. The record contains disability notes dated February 1 and March 22, 2010.

On April 2, 2010 OWCP notified appellant that the evidence submitted was insufficient to establish her claim and advised her to provide, within 30 days, additional documentation, including a firm diagnosis and a physician's opinion as to how her injury resulted in the diagnosed condition. It specifically asked her to provide a detailed description as to how the injury occurred, including the cause of the injury; statements from any witnesses or other documentation supporting her claim; and the reason she delayed seeking medical treatment.

In an April 16, 2010 statement, appellant indicated that, at the time of the claimed injury, her workstation was covered with the entire day's mail and packages, including a large box and a computer. When the table collapsed, she had to press down with her right foot (on her toes), lifting her right leg in order to support it. Appellant reportedly yelled that she was serious and needed help. She indicated that she did not know if her coworker could see her leg pressed under the table because her coworker never came around behind her.

On April 26, 2010 Dr. Inzerillo diagnosed acute knee pain and sciatica and opined that appellant's pain was causally related to her work injury.

In a merit decision dated May 10, 2010, OWCP denied appellant's claim. It found that the evidence was insufficient to establish that she sustained an injury in the performance of duty.

On May 13, 2010 appellant requested an oral hearing.

Appellant submitted reports dated June 8 through October 14, 2010 from Dr. Inzerillo. On June 8, 2010 Dr. Inzerillo stated that she twisted her knee when a heavy table fell on her at work. On October 14, 2010 he indicated that appellant had been under his care since February 2010, when a heavy table fell on her leg at work and she injured her knee and back.

At an October 22, 2010 hearing, appellant testified that, at the time of the claimed incident, she did not report that the table was on her leg. She stated that Dr. Santikul incorrectly reported that she had been experiencing right knee pain for three weeks at the time of her January 30, 2010 visit.

On November 19, 2010 the employing establishment challenged appellant's claim on the grounds that she had failed to establish the fact of injury, noting her delay both in filing her claim and seeking medical treatment, as well as her failure to report any leg injury to witnesses at the time of the claimed incident. According to employing establishment records, appellant had undergone two previous surgeries on her right knee following a motor vehicle accident and for preexisting chronic knee condition and chondromalacia. The employing establishment noted that she had claimed eight injuries since 2001, namely: November 20, 2001 (accepted right knee and leg sprain); September 7, 2004 (traumatic injury to foot, no lost time); May 12, 2008 (accepted contusion of ankle and tarsal tunnel syndrome); August 19, 2008 (contusion of left foot and ankle); and the instant claim.

In a December 3, 2010 statement, appellant stated that her delay in filing her claim was due to her employer's failure to respond to her request for action. She explained that she did not report an injury to her leg at the time of the claimed incident because she was not immediately aware of an injury in her leg.

The record contains a properly completed Form CA-16, dated February 1, 2010, authorizing emergency examination and treatment by Dr. Inzerillo for a January 23, 2010 right leg injury.

By decision dated December 20, 2010, an OWCP hearing representative affirmed the May 10, 2010 decision on the grounds that the evidence of record failed to establish that the claimed event occurred as alleged.

LEGAL PRECEDENT

FECA² provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.³ The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage

² *Id.*

³ *Id.* at § 8102(a).

formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."⁴

An employee seeking benefits under FECA has the burden of proof to establish 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 or specific condition for which compensation is claimed is causally related to the employment injury.⁵ When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," namely, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged and that such event, incident or exposure caused an injury.⁶

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant's statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁷

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁸ An award of compensation may not be based on appellant's belief of causal relationship. Neither, the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether

⁴ This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

⁵ *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *See Paul Foster*, 56 ECAB 208 (2004). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury" as defined by FECA, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

⁷ *See Betty J. Smith, id.*

⁸ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.¹⁰

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a traumatic injury to her right knee on January 23, 2010. Appellant's presentation of the facts is not supported by the evidence of record and does not establish her allegation that a specific event occurred which caused an injury on the date in question.¹¹ Moreover, there are inconsistencies in the evidence which cast serious doubt on the validity of her claim.

Appellant initially reported on her February 10, 2010 Form CA-1 that she used her right knee to support her work table when it collapsed. However, her allegations are vague and do not relate with specificity the circumstances or the exact and immediate consequences, of the injury, such as whether she experienced pain or whether her knee was bleeding or bruised.

Appellant's subsequent course of action also fails to support her claim. She admittedly did not seek medical treatment for a week following the alleged incident. Appellant stated that she yelled to her coworker that the table was collapsing. She testified, however, that she did not tell anyone that the table was on her knee or that her knee was injured. The employing establishment denied appellant's allegation and provided a witness statement averring that she was holding the table up with her hand. Appellant provided no statements to corroborate her claim from anyone who either witnessed or to whom she immediately reported the incident.

Appellant's claim is further undermined by inconsistencies in the evidence. In her CA-1 form, she alleged that she was forced to use her right knee to support the falling table. However, on April 16, 2010 appellant stated that, when the table collapsed, she had to press down with her right foot (on her toes), lifting her right leg in order to support it. She contended that her right knee pain was caused by the January 23, 2010 work-related incident. However, on January 30, 2010 Dr. Santikul stated that appellant had been experiencing knee pain and swelling for three weeks prior and noted her belief that her right knee pain resulted from compensating for her chronic left ankle pain. On March 15, 2010 Dr. Inzerillo stated that she sustained a right knee injury when a heavy table fell on her at work and she twisted her knee. On October 14, 2010 he indicated that a heavy table fell on appellant's leg at work in February 2010 and she injured her knee and back.

The Board finds that appellant has failed to establish the fact of injury: she did not submit sufficient evidence to establish that she actually experienced an employment incident at

¹⁰ *John W. Montoya*, 54 ECAB 306 (2003).

¹¹ *See Dennis M. Mascarenas*, *supra* note 9.

the time, place and in the manner alleged.¹² The inconsistencies in both appellant's allegations and the medical evidence of record cast serious doubt on the validity of her claim.¹³ Appellant provided no evidence to corroborate any version of alleged facts. Due to these deficiencies the Board finds that she has failed to establish her claim.¹⁴

CONCLUSION

Appellant has not met her burden of proof to establish that she sustained a traumatic injury to her right knee in the performance of duty on January 23, 2010.¹⁵

¹² See also *Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, *supra* note 6. 5 U.S.C. § 8101(5). See 20 C.F.R. § 10.5(ee).

¹³ See *Betty J. Smith*, *id.*

¹⁴ See *Caroline Thomas*, 51 ECAB 451, 455 (2000).

¹⁵ The Board notes that OWCP issued a CA-16 form. A properly executed CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. See *Elaine M. Kreymborg*, 41 ECAB 256 (1989). The CA-16 form issued to appellant authorized examination and treatment and was therefore properly executed. Although OWCP adjudicated and denied appellant's claim of injury, it did not adjudicate the issue of reimbursement.

ORDER

IT IS HEREBY ORDERED THAT the December 20, 2010 decision of the Office of Workers' Compensation Programs is affirmed.¹⁶

Issued: September 22, 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

¹⁶ 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.