

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

R.M., Appellant

and

**DEPARTMENT OF DEFENSE, NATIONAL
GEOSPATIAL INTELLIGENCE AGENCY,
Arnold, MO, Employer**

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**Docket No. 11-550
Issued: January 13, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 3, 2011 appellant filed a timely appeal of the August 3, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 established that she sustained a back and right foot injury in the performance of duty on May 10, 2010, as alleged.

FACTUAL HISTORY

On May 17, 2010 appellant, then a 36-year-old electronic staff officer, filed a traumatic injury claim alleging that on May 10, 2010 she hurt her lower back and sustained minor bruising

¹ 5 U.S.C. § 8101 *et seq.*

on the right side of her right foot when she stepped on a twig on a sidewalk which caused her right foot to roll. She did not fall to the ground as she caught herself, twisting her lower back. Appellant stopped work on the date of injury.²

In a May 10, 2010 medical report, Dr. Nestor M. Shust, Board-certified in emergency medicine, excused appellant from work that day.

In a May 10, 2010 treatment note, Celia Ellington, an employing establishment registered nurse, obtained a history of the May 10, 2010 incident and addressed the treatment of appellant's back pain.

In a May 18, 2010 report, Dr. Gretchen E. Kluesner, a Board-certified internist, excused appellant from work from May 11 through 18, 2010.

By letter dated May 28, 2010, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested medical and factual evidence. OWCP also requested that the employing establishment provide factual evidence regarding appellant's claim.

Appellant submitted narrative and witness statements and e-mails written by her and Nathaniel R. Smith, an employee, describing the May 10, 2010 incident. She also described her symptoms and medical treatment.

In another report dated May 10, 2010, Dr. Shust obtained a history of the May 10, 2010 incident and appellant's medical, family and social background. He noted appellant's complaints of back pain radiating to her groin area, limited mobility, instability, limping, spasms, swelling and tenderness. Appellant also had moderate pain and swelling in her right foot. Dr. Shust listed essentially normal findings on physical and x-ray examination with the exception of lumbar spine posterior tenderness, paravertebral muscle spasm and bilateral lumbosacral tenderness. He advised that appellant had low back strain and right lateral mid-foot strain/bruise due to her fall.

On May 20 and 24, 2010 Dr. Kluesner ordered physical therapy to treat appellant's back pain. In reports dated May 12 and 20, 2010, she noted that appellant's complaints of low back pain and inability to work due to her pain following her fall at work. Dr. Kluesner provided essentially normal findings on physical examination, noting lumbar spine posterior tenderness, paravertebral muscle spasm and bilateral lumbosacral tenderness. She diagnosed backache likely from muscle spasm. In a June 8, 2010 report, Dr. Kluesner obtained a history that appellant experienced back pain after twisting her right foot at work. She diagnosed back pain and muscle spasm. Dr. Kluesner advised that the diagnosed conditions were caused by the stated work incident.

A May 26, 2010 report from Ann Halquist, a physical therapist, addressed the treatment of appellant's back pain.

² Appellant returned to work on May 19, 2010. She did not work a full day due to back pain for which she sought medical treatment. Appellant returned to work four and one-half hours per day on May 24, 2010 for one week and planned to return to her regular nine-hour-per-day work schedule commencing the following week.

In a June 3, 2010 report, Dr. Shaukat A. Thanawalla, a Board-certified internist, noted appellant's complaint of back pain radiating down her bilateral legs which became numb. He listed essentially normal findings on physical examination of the back and legs, with the exception of a limp.

In a May 10, 2010 e-mail, Danny E. Johns, an employing establishment safety inspector, stated that appellant related to him that she hurt her back while walking to work. Appellant's right foot turned which caused her to lose her balance and twist her back. She stated that there was sap and a twig on the sidewalk. Mr. Johns inspected the accident scene and discovered a small piece of mulch and a twig on the sidewalk. In a June 15, 2010 letter, Christina R. Stortz, an injury compensation specialist, stated that the property where the accident occurred was owned by the military and used for the sole purpose of the employing establishment's employees. It was a secured facility and no one without a specified badge could gain entry.

In an August 3, 2010 decision, OWCP denied appellant's claim, finding the medical evidence insufficient to establish that she sustained a back and right foot injury causally related to the accepted May 10, 2010 employment incident.³

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 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.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.⁶

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 or exposure, which is alleged to have occurred.⁷ In order to meet her burden of proof to establish the fact that she sustained an injury in the

³ Following the issuance of OWCP's August 3, 2010 decision, OWCP received additional evidence. The Board may not consider evidence for the first time on appeal which was not before OWCP at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 5.

⁷ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁸

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁹ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.¹⁰ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.¹¹

ANALYSIS

OWCP accepted that appellant tripped over a twig on a sidewalk on May 10, 2010 while working as an electronic staff officer. The Board finds that this case is not in posture for decision as to whether appellant's claimed back and right foot conditions were caused or aggravated by the accepted employment incident.

In reports dated May 10, 2010, Dr. Shust listed his findings on physical examination of the lumbar spine and right foot which included lumbar spine posterior tenderness, paravertebral muscle spasm, bilateral lumbosacral tenderness, moderate pain and swelling in appellant's right foot. He found that appellant sustained low back strain and right lateral mid-foot strain/bruise due to the May 10, 2010 employment incident. Dr. Shust excused her from work that day.

The Board notes that, while Dr. Shust's reports of record are not completely rationalized, they are consistent in finding that appellant sustained the diagnosed back and right foot conditions, because of the May 10, 2010 incident. These reports are not contradicted by any substantial medical or factual evidence of record.¹² While the reports are not sufficient to meet appellant's burden of proof to establish her claim, they raise an inference of causal relationship between her claimed conditions and the May 10, 2010 employment incident.¹³

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁴

⁸ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁹ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

¹⁰ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

¹¹ *Charles E. Evans*, 48 ECAB 692 (1997).

¹² *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹³ *Id.*; see also *John J. Carlone*, *supra* note 9.

¹⁴ *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard (Lionel F. Richard)*, 53 ECAB 430 (2002); *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

On remand, OWCP should refer appellant, together with the case record and a statement of accepted facts, for examination by an appropriate specialist and a rationalized medical opinion as to whether her low back strain and right lateral mid-foot strain/bruise were causally related to the May 10, 2010 employment incident. After such further development as it deems necessary, it shall issue an appropriate decision concerning appellant's claim and medical treatment.

CONCLUSION

The Board finds that the case is not in posture for decision as to whether appellant established that she sustained a back and right foot injury in the performance of duty on May 10, 2010, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: January 13, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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