United States Department of Labor
Employees' Compensation Appeals Board

S.C., Appellant	)	
and	)	**Docket No. 12-170**
	)	**Issued: July 11, 2012**
U.S. POSTAL SERVICE, POST OFFICE, New York, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 7, 2011 appellant filed a timely appeal from an August 2, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant established that she sustained an injury in the performance of duty on January 18, 2011, as alleged.

FACTUAL HISTORY

On January 18, 2011 appellant, a 46-year-old letter carrier, filed a traumatic injury claim alleging that on that day she hurt her lower back when she slipped and fell on ice during the performance of her federal duties. She noted the location where the incident occurred and stated

[1] 5 U.S.C. § 8101 *et seq.*

that she fell while going up a ramp. Appellant stopped work on January 19, 2011 and sought medical attention from Metropolitan Hospital Center. She did not return to work.

Appellant submitted medical reports from Dr. Paul Hobeika, a Board-certified orthopedic surgeon, dated March 28 to May 24, 2011. Dr. Hobeika reported that he first saw her on March 28, 2011 from a January 18, 2011 employment-related fall on ice. Appellant was seen at Metropolitan Hospital Center, where she had an x-ray and was discharged. Dr. Hobeika noted that appellant did not see any other physician for treatment after she was discharged. He noted physical examination findings and opined that appellant had signs of lumbosacral sprain, strain and contusion. Dr. Hobeika further opined that she could not work because of lower back problems. He ordered further x-rays and physical therapy. In a March 28, 2011 duty status report, Dr. Hobeika diagnosed back strain and contusion and stated that appellant's description of slipping on ice at work was consistent with the diagnosed conditions.

In a May 24, 2011 note, Dr. Hobeika indicated that appellant could not work because of lower back problems. In a May 28, 2011 note, he noted that she had mechanical back pain and contusion. Dr. Hobeika authorized physical therapy.

In a June 30, 2011 letter, OWCP noted that, when appellant's claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work. Because the employing establishment did not controvert continuation of pay (COP) or challenge the merits of the case, payment of medical expenses was administratively approved. As appellant's medical bills exceeded $1,500.00, the merits of her claim would be adjudicated. OWCP informed appellant of the factual and medical evidence needed to establish her claim. In particular, it noted that the evidence was not sufficient to establish that she actually experienced the incident or employment factor alleged to have caused injury. OWCP also noted that a physician's opinion as to how her claimed injury resulted in a diagnosed condition was not provided. It noted that the employing establishment indicated that, while appellant stated that she would return to work after COP ended, she did not return to work due to a nonwork-related surgery.

In a July 21, 2011 notarized statement, appellant stated that on January 18, 2011 she slipped and fell on some black ice going up a ramp as she was leaving building 626. As she reached the top of the ramp, she slipped and her legs went up from under her causing her to land on her back side while trying to keep her mail cart from rolling backwards on her. Appellant advised that no one had witnessed her fall or helped her up. She started experiencing pain after about five minutes but eventually continued to the next building thinking it would stop. After appellant finished her route, she went back to the station where she informed her supervisor and shop steward of the incident. After leaving work, she went to a local emergency room and was told to use an ice pack as the x-rays did not reveal any broken bones. Appellant stated that the emergency department called her the next day and asked her to come back because her blood sugar level was low. She also discussed her medical treatment. Appellant submitted a January 18, 2011 emergency room discharge instruction sheet for back pain, requests for physical therapy and a Form CA-1 and medical care form signed by her and her supervisor on January 18, 2011.

The progress reports from Dr. Hobeika were also submitted. On June 28, 2011 he opined that appellant's mechanical back pain was related to her accident. Dr. Hobeika indicated that she could work light duty on July 9, 2011.

In a July 21, 2011 report, Dr. Michael Luy, a Board-certified pain specialist, noted that appellant was seen at the clinic at Metropolitan Hospital Center for follow up on her back pain on June 14 and July 21, 2011.

On July 27, 2011 the employing establishment notified OWCP that, while appellant could return to work on the 48th day, she did not return due to unrelated surgery.

By decision dated August 2, 2011, OWCP denied appellant's claim on the grounds that fact of injury was not established. It found that the evidence was insufficient to establish that the January 18, 2011 incident occurred as alleged. OWCP found that there was insufficient medical evidence addressing how her low back condition related to the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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.[2] 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.[3]

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.[4] 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.[5] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[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

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

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

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

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

[6] *Id.*

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.[7] 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.[8] An employee has not met his or her burden of proof in 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.[9] 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.[10] 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.[11]

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, it shares responsibility to see that justice is done.[12] The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.[13]

ANALYSIS

Appellant alleged that she sustained an injury to her lower back on January 18, 2011 when she slipped and fell on ice on a ramp at work. She notified the employing establishment of the incident after completing her route and filed a claim for compensation that day. Appellant sought medical treatment at the emergency room on January 19, 2011 and followed up with a private physician, Dr. Hobeika, on March 28, 2011.

OWCP found the factual evidence was not sufficient to establish the occurrence of the January 18, 2011 employment incident. The Board, however, finds that the evidence is sufficient to establish that appellant experienced the January 18, 2011 work incident at the time, place and in the manner alleged. 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 or persuasive evidence.[14] In this case, the record does not contain factual evidence sufficient to

[7] *See Louise F. Garnett*, 47 ECAB 639 (1996).

[8] *See Betty J. Smith*, 54 ECAB 174 (2002).

[9] *See D.B.*, 58 ECAB 464 (2007); *id.*

[10] *Linda S. Christian*, 46 ECAB 598 (1995).

[11] *See V.F.*, 58 ECAB 321 (2007); *Gregory J. Reser*, 57 ECAB 277 (2005).

[12] *Jimmy A. Hammons*, 51 ECAB 219 (1999).

[13] 20 C.F.R. § 10.121.

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

show that the claimed incident did not occur as alleged.[15] Appellant stated that she informed the employing establishment of the work incident after she completed her route, which is evidenced by the signed Medical Hospital Care form of January 18, 2011 as well as her CA-1 form. She went to the emergency room the next day and received discharge instructions for back pain. Dr. Hobeika diagnosed appellant with a back strain and contusion and opined that slipping on ice at work was consistent with her description. As noted, the employing establishment did not controvert the claim. Under the circumstances of this case, appellant's allegations are not refuted by strong or persuasive evidence and there are no inconsistencies sufficient to cast serious doubt on her version of the employment incident.[16] Consequently, appellant has established the occurrence of the January 18, 2011 work incident.

The remaining issue is whether the medical evidence establishes that appellant sustained a back injury causally related to the employment incident. The question of whether an employment incident caused an injury is generally established by medical evidence.[17]

On March 28, 2011 Dr. Hobeika reported he first saw appellant for a January 18, 2011 on-the-job fall. He noted that she fell on ice and was seen at Metropolitan Hospital, where she had an x-ray and was discharged. Dr. Hobeika diagnosed lumbosacral sprain/strain as well as a contusion. He opined in a March 28, 2011 duty status report that appellant's description of slipping on ice at work was consistent with the diagnosed back strain and contusion. In a June 28, 2011 report, Dr. Hobeika opined that her mechanical back pain was related to her incident at work. His opinion is generally supportive and unequivocal and based on an accurate history of injury. Dr. Hobeika's opinion lacks only objective evidence and an explanation of why the January 18, 2011 incident resulted in the diagnosed conditions. While the medical evidence is insufficiently rationalized to meet appellant's burden of proof, it raises an unrefuted inference of causal relationship sufficient to require further development by OWCP.[18] Accordingly, the Board will remand the case to OWCP. On remand, OWCP should further develop the medical record to determine whether appellant sustained an injury causally related to the January 18, 2011 work incident. Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

[15] *See Thelma Rogers*, 42 ECAB 866 (1991).

[16] *See M.H.*, 59 ECAB 461 (2008).

[17] *See John W. Montoya*, 54 ECAB 306 (2003).

[18] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the August 2, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this decision of the Board.

Issued: July 11, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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