

FACTUAL HISTORY

On March 28, 2011 appellant, a 42-year-old city carrier, filed a traumatic injury claim alleging that she sprained her left second toe that date. She described the cause of injury as “unknown.”

Appellant received medical attention the same day. The history of injury stated: “Patient caught left forefoot on ground, forefoot bent.” Another history of injury stated: “As I was stepping out of my mail truck, I twisted my left foot. Patient states left forefoot was compressed and bent as left toe was caught on ground and foot and her body continued in forward motion.”

OWCP advised that the evidence was not sufficient to establish that appellant actually experienced a specific incident or employment factor alleged to have caused injury: “You have failed to provide this office with a description of where or how your injury occurred.” OWCP gave her 30 days to provide additional evidence.

In a June 29, 2011 decision, OWCP denied appellant’s injury claim. It found that she failed to provide a statement as to what specific event occurred during her employment that caused an injury.

On July 18, 2011 appellant requested reconsideration based on the medical evidence presented by the doctor in charge. She explained that, since this was an injury on the job, she was required go to the doctor on the clock. Appellant stated: “My place of employment took too long to authorize my doctor’s appointment and as a result, I was unable to submit the documentation required on time.”

In an August 11, 2011 decision, OWCP denied appellant’s request for reconsideration. It found that her letter was either cumulative or irrelevant, as it provided no further information regarding the factual aspects of her claim. OWCP added that medical evidence was irrelevant to the pertinent issue.

On appeal, appellant argues that she was injured while performing her duties as a city letter carrier. She notified her supervisor, filed a traumatic injury report and went to a doctor, who examined her and diagnosed a sprain/strain of the left foot, following which she was put on crutches and was therefore not able to perform her job properly.

LEGAL PRECEDENT -- ISSUE 1

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the

² 5 U.S.C. § 8102(a).

time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.³

A person who claims benefits under FECA has the burden of establishing by a preponderance of the reliable, probative and substantial evidence the essential elements of her claim, including the fact that she sustained an injury at the time, place and in the manner alleged.⁴ 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 her 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 sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁵

ANALYSIS -- ISSUE 1

OWCP denied appellant's claim because she failed to explain what happened on March 28, 2011. On her claim form, appellant described the cause of injury as "unknown." This raised a question how an injury occurred and whether it had anything to do with her duties as a city carrier. The mere fact that a medical condition manifests itself or worsens during a period of federal employment raises no inference of causal relationship between the two.⁶ OWCP requested a statement from appellant explaining how she injured her left second toe.

OWCP allowed appellant 30 days to submit a statement describing how the injury occurred. Appellant did not respond. The Board finds that she failed to establish a factual basis for her claim. Appellant bears the burden of proof to establish the essential elements of her claim, and she has failed to provide OWCP with a description of what happened on March 28, 2011.

The Board notes that medical evidence from March 28, 2011 gives a fairly detailed history of an injury and yet, appellant described the cause of injury on her claim form as "unknown." This is an unexplained inconsistency. Appellant was able to tell her medical providers what happened, but was unable to tell OWCP, either on her claim form or when OWCP gave her 30 days to explain or when she requested reconsideration following the denial of her claim. To establish a factual basis for her claim, appellant must describe what happened on March 28, 2011 and reconcile the cause of injury on her claim form with the history of injury she gave to her medical providers.

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Henry W.B. Stanford*, 36 ECAB 160 (1984); *Samuel L. Licker*, 4 ECAB 458 (1951).

⁵ *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984). See also *George W. Glavis*, 5 ECAB 363 (1953).

⁶ *Steven R. Piper*, 39 ECAB 312 (1987).

The Board finds that appellant failed to submit sufficient factual evidence to establish that she experienced a specific event or incident at work on March 28, 2011. The Board will therefore affirm OWCP's June 29, 2011 decision to deny her claim for workers' compensation benefits.

On appeal, appellant argues that she was injured while performing her duties as a city letter carrier but she still has not explained how. As found above, she has not provided OWCP with a description of what happened at work that day; what she was doing before her injury; how she knew she was injured; and what, if anything, happened that might have caused the injury. Appellant argues that she followed proper procedure, but she did not do what OWCP asked of her, which was to provide a statement explaining what happened.

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.

LEGAL PRECEDENT -- ISSUE 2

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.⁷ An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by OWCP in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁸

A request for reconsideration must be sent within one year of the date of OWCP's decision for which review is sought.⁹ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.¹⁰

ANALYSIS -- ISSUE 2

Appellant sent her July 18, 2011 reconsideration request within one-calendar year of OWCP's June 29, 2011 decision denying her claim for workers' compensation benefits. The request is therefore timely. The question for determination is whether OWCP properly denied that request.

⁷ 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.606.

⁹ *Id.* at § 10.607(a).

¹⁰ *Id.* at § 10.608.

In her reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not identify a specific point of law or show that OWCP erroneously applied or interpreted it.

Appellant did not advance a relevant legal argument not previously considered by OWCP. She explained that the employer took too long to authorize her doctor's appointment, and as a result she was unable to submit the required documentation on time. The required documentation was simply a statement from appellant describing what happened on March 28, 2011. Appellant did not need to see a doctor before preparing a statement explaining how the injury occurred, and she did not have to await authorization from her employer to send this statement to OWCP. The argument she made about going to her doctor is irrelevant -- it does not address the reason OWCP denied her claim on June 29, 2011, which was on factual grounds, not medical.

Appellant did not support her reconsideration request with relevant and pertinent new evidence not previously considered by OWCP.

The Board finds that appellant's request did not meet at least one of the three standards for obtaining a merit review of her case. She did not show that OWCP erroneously applied or interpreted a specific point of law; she did not advance a relevant legal argument not previously considered by OWCP; and she did not submit relevant and pertinent new evidence not previously considered by OWCP. Accordingly, the Board will affirm OWCP's August 11, 2011 decision denying appellant's reconsideration request.

CONCLUSION

The Board finds that appellant has not met her burden to establish that she sustained an injury in the performance of duty on March 28, 2011. The Board also finds that OWCP properly denied her July 18, 2011 reconsideration request.

ORDER

IT IS HEREBY ORDERED THAT the August 11 and June 29, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 25, 2012
Washington, DC

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

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

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