

**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. 13-1518
Issued: December 2, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 11, 2013 appellant, through her attorney, filed a timely appeal from a May 30, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 met her burden of proof to establish that she sustained a traumatic injury while in the performance of duty on January 23, 2010.

On appeal appellant's attorney asserts that the medical and factual evidence of record establishes that she sustained an employment-related traumatic injury on January 23, 2010.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

This case has been before the Board on two prior occasions. In a September 22, 2011 decision, the Board affirmed a December 20, 2010 merit decision of OWCP. The Board found that appellant did not submit sufficient evidence to establish that she experienced an employment incident at the time, place and in the manner alleged due to inconsistencies in both her allegations and the history of injury provided to medical providers.² In a January 24, 2013 decision, the Board set aside a July 3, 2012 nonmerit OWCP decision. The Board found that the medical evidence submitted was not relevant to the merit issue in this case, whether appellant established that she sustained an employment-related injury on January 23, 2010 at the time, place and in the manner alleged. However, appellant also had submitted new and relevant evidence in the form of statements from her husband, a shop steward and photographs. The Board remanded the case to OWCP for further merit review.³

The record indicates that 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 duty when the folding table at which she was working collapsed. She used her right knee to support the falling table, which was covered with mail.

In the May 22, 2012 reconsideration request, appellant's attorney noted that the original table had been discarded by the employing establishment. He submitted two photographs of tables, described as duplicates of the defective table, to demonstrate the magnitude of weight that appellant supported on her knee and with her hands. Appellant also submitted a statement in which she alleged that when the work table collapsed, she was unable to move her legs from under the table because she was pinned in by adjacent boxes and a utility cart.

In a January 13, 2012 statement, appellant's husband, a coworker and union steward, noted that on January 23, 2010 appellant was performing her normal clerical duties when the long, heavy table at which she was working began to collapse down on her, causing her to injure her right knee while attempting to hold the table up. On January 21, 2012 appellant's husband reported that he did not directly witness the events of January 23, 2010 but that later that morning he inspected the table where she had been working and observed that the safety bracket was flared in a manner that rendered it useless. During the following week, appellant experienced a great deal of right knee pain. On January 30, 2010 her husband was summoned by a supervisor because appellant was experiencing severe knee pain and swelling. He stated that, in his capacity as a shop steward, he performed an investigation of the circumstances surrounding the claimed injury and interviewed Linda Aldi, a coworker, and Amber Kaiser, a supervisor. Appellant's husband noted that their statements were somewhat inconsistent but both confirmed that the table collapsed on appellant's right knee on the date in question. Appellant also submitted additional medical evidence.

In a February 11, 2010 statement, Ms. Kaiser stated that on January 23, 2010 she and Ms. Aldi were present when appellant noted that the table was collapsing. She witnessed

² Docket No. 11-557 (issued September 22, 2011).

³ Docket No. 12-1890 (issued January 24, 2013).

appellant holding the table by her right hand. Ms. Kaiser and Ms. Aldi then grabbed the table and adjusted it to a locked position. Ms. Kaiser stated that she did not see appellant holding up the table with her leg and that appellant did not report that the table had touched her leg.

In November 19, 2010 correspondence, the employing establishment noted that, according to its records, appellant had undergone two previous surgeries on her right knee following a motor vehicle accident and for a preexisting chronic knee condition and chondromalacia. She had claimed eight injuries since 2001.⁴

In a merit decision dated May 30, 2013, OWCP reviewed the evidence of record. It denied appellant's claim finding inconsistencies in the evidence to establish that she sustained an employment-related right knee injury on January 23, 2010.

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 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 and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.⁵

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.⁶ To determine whether an employee sustained a traumatic injury in the performance of duty, it 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. 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. 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.⁷ It is the employee's burden to establish that his or her injury occurred at the time, place and in the manner alleged.⁸

⁴ The claims included a November 20, 2001 claim, accepted for right knee and leg sprain; a September 7, 2004 claim for a traumatic injury foot injury -- no lost time; a May 12, 2008 claim accepted for contusion of the ankle and tarsal tunnel syndrome; an August 29, 2008 claim for contusion of the left foot and ankle; and the instant claim.

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ 20 C.F.R. § 10.5(ee) (1999, 2011); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁷ *Gary J. Watling*, *supra* note 5.

⁸ *H.G.*, 59 ECAB 552 (2008).

ANALYSIS

The Board finds that appellant did not establish that she sustained an employment-related traumatic right knee injury on January 23, 2010. In its prior decision, the Board remanded the case to OWCP to review the statements from appellant's husband and the photographs submitted with a May 22, 2012 reconsideration request.⁹

In its May 30, 2013 decision, OWCP found that the photographs of a table similar to that which collapsed on January 23, 2010, do not establish that appellant injured her right leg when a similar table fell on January 23, 2010.

The Board finds that the statements from appellant's husband are also insufficient to establish that she injured her right leg on January 23, 2010. Appellant's husband acknowledged that he did not witness the incident. He noted that he performed an investigation as shop steward and summarized an investigation in his January 21, 2012 statement. Appellant's husband did not forward a copy of the investigation or any signed statements referenced in the January 21, 2012 statement. As he did not witness the January 23, 2010 incident, his statements are of diminished probative value.¹⁰ The statement of Ms. Kaiser, previously of record, did not support that the table fell to or struck appellant's right knee. 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.¹¹ Appellant did not establish that she sustained an employment-related injury at the time, place and in the manner alleged.¹²

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.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an employment-related injury on January 23, 2010.

⁹ As noted above, in its January 24, 2013 decision, the Board found that the medical evidence submitted with the May 22, 2012 reconsideration request was not relevant to the merit issue in this case, whether appellant established that she sustained an employment-related injury on January 23, 2010 at the time, place and in the manner alleged.

¹⁰ *See S.F.*, 59 ECAB 525 (2008).

¹¹ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008).

¹² *S.P.*, 59 ECAB 184 (2007).

ORDER

IT IS HEREBY ORDERED THAT the May 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 2, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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