United States Department of Labor
Employees' Compensation Appeals Board

S.M., Appellant	)	
and	)	**Docket No. 12-946**
	)	**Issued: January 29, 2013**
DEPARTMENT OF VETERANS AFFAIRS, TUSCALOOSA VETERANS HOSPITAL, Tuscaloosa, AL, 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 March 22, 2012 appellant filed a timely appeal of a January 25, 2012 Office of Workers' Compensation Programs' (OWCP) merit decision 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained a traumatic injury on June 2, 2010 in the performance of duty.

FACTUAL HISTORY

Appellant, then a 49-year-old nurse, filed a traumatic injury claim alleging that she bruised her knees and was "shaken up" in the performance of duty when she slipped and fell on the bottom two steps of stairwell B-38 at the employing establishment on June 2, 2010. Her

[1] 5 U.S.C. § 8101 *et seq.*

claim form was dated December 20, 2010. Appellant's supervisor noted receiving notice of the injury on December 14, 2011 and that no lost time or medical expenses were incurred.

In a letter dated December 16, 2011, OWCP requested that appellant provide additional factual and medical evidence in support of her claimed employment injury. It allowed her 30 days for a response.

In a narrative statement dated December 28, 2011, appellant stated that she fell down stairs at work on June 2, 2010 and was treated at the employing establishment health unit. She was performing her regular duties at the time of the incident and developed back pain. Appellant stated that she had weakness of the extensor halluces longus and tibialis anterior with positive straight leg raising. She stated that she planned to undergo surgery.

In a December 12, 2011 note, Dr. Rick McKenzie, a Board-certified neurosurgeon, stated that appellant fell in June at work striking her knees, buttocks and back. He compared a magnetic resonance imaging (MRI) scan with a previous computerized tomography scan obtained in March. Dr. McKenzie noted some minor disc bulging with left-sided impingement at L4-5 on the right, subarticular stenosis and crowding of the descending L5 nerve root. He stated that appellant's fall could have caused the neural impingement and recommended left L4-5 lateral recess decompression.

By decision dated January 25, 2012, OWCP denied appellant's claim on the grounds that the factual element of her claim had not been established. It determined that the evidence was not sufficient to establish that the June 2, 2010 incident occurred as alleged. OWCP also stated that appellant had not submitted any medical evidence in support of her claim.

LEGAL PRECEDENT

OWCP defines 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. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and members or functions of the body affected."[2]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. 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 which is alleged to have occurred.[3] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

[2] 20 C.F.R. § 10.5(ee).

[3] *Elaine Pendleton*, 40 ECAB 1143 (1989).

An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact 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 subsequent course of action. An employee has not met his or her burden of proof of 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. 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 sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established. 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.[4]

The employee must also submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.[5]

ANALYSIS

Appellant alleged that she fell down the bottom two steps of a stairway at the employing establishment on June 2, 2010. She delayed filing a claim until December 20, 2010. She submitted a narrative statement and a treatment note dated December 21, 2011 from Dr. McKenzie in support of her claim. Dr. McKenzie obtained a history that appellant fell at work "in June," but did not identify the year, or describe the nature of the fall. He noted that appellant struck her knees, buttocks and back. Dr. McKenzie did not provide any history of the year and a half from the June 2, 2010 alleged incident to his report in December 2011.

The Board finds that the factual evidence is insufficient to establish that the employment incident occurred as alleged, *i.e.*, that appellant fell down the bottom two steps of stairwell B-38 on June 2, 2010 as alleged. Appellant provided notification of her injury some six months after the fact, a late notification of injury. She did not lose time from work or seek immediate medical attention. There are no witness statements or indication that she provided the employing establishment with notification of her fall until December 2011, lack of confirmation of injury. The record indicates that appellant continued to work without apparent difficulty following the alleged injury and failed to obtain medical treatment until December 20, 2011 a period of one and half years. Appellant has not offered any explanation for these factual deficiencies in her claim. As noted above, such defects in the factual evidence are sufficient to cast doubt on whether the employment incident occurred as alleged.

Appellant has failed to establish fact of injury: she did not submit sufficient evidence to establish that she actually experienced an employment incident at the time, place and in the manner alleged.[6]

[4] *D.B.*, 58 ECAB 464, 466-67 (2007).

[5] *J.Z.*, 58 ECAB 529 (2007).

[6] *V.H.*, Docket No. 12-1621 (issued December 21, 2012).

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 has failed to establish an employment incident on June 2, 2010 as alleged; thus, fact of injury is not established.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 29, 2013
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