

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

O.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Baltimore, MD, Employer)

**Docket No. 12-1145
Issued: January 2, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 30, 2012 appellant filed a timely appeal from an April 19, 2012 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 met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on February 13, 2012.

FACTUAL HISTORY

On February 22, 2012 appellant, then a 38-year-old city carrier, filed a traumatic injury claim alleging pain in her right foot on February 13, 2012 as the result of stepping out of her vehicle onto the pavement. In a February 22, 2012 statement, she stated that, while delivering

¹ 5 U.S.C. § 8101 *et seq.*

mail on February 13, 2012, she felt pain when she placed her right foot on the pavement while getting out of the postal vehicle. Appellant continued with her deliveries despite intense pain. About a week later she experienced right foot pain while driving home, which became unbearable. Appellant had to use her left foot to stop her vehicle from colliding into the car in front of her. The following morning, February 22, 2012, she admitted herself to the hospital for treatment of her foot condition.

In a February 23, 2012 report Dr. Jeannine L. Saunders, an examining Board-certified internist, diagnosed right foot pain. She obtained a history that on February 13, 2012 appellant experienced extreme pain over the top of her foot when she stepped from a vehicle. Appellant denied any specific injury. A physical examination revealed minimal swelling over the dorsal aspect of the foot. Dr. Saunders noted that appellant was seen at the Northwest Hospital Center on February 22, 2012 and was diagnosed with foot pain of unclear etiology. She provided work restrictions for appellant, which included limitations on walking, squatting, kneeling, climbing. Dr. Saunders indicated that appellant was restricted to performing sedentary work 75 percent of the time.

In a March 2, 2012 work activity status report, Dr. Timothy Allen, a treating osteopath, diagnosed limb pain. He released appellant to work that day with restrictions of no prolonged standing and no walking for more than 10 minutes per hour.

By letter dated March 8, 2012, OWCP advised appellant that the evidence of record was insufficient to support her claim. Appellant was provided 30 days to submit a medical report from a physician explaining how the purported incident caused or contributed to a diagnosed condition as well as factual evidence regarding the alleged incident.

In a February 22, 2012 hospital report, Dr. Cliff Faber, a treating Board-certified internist and emergency room physician, diagnosed foot pain of unknown etiology. Under history of injury, appellant related having "right foot pain dorsally for [eight] days without injury" and that she started walking her route three weeks prior. An x-ray revealed no acute disease process.

In progress notes dated March 2, 2012, Dr. Allen diagnosed right ankle/foot pain. He noted February 13, 2012 as the date of injury. Under history of injury, Dr. Allen related that appellant immediately felt mid foot pain when stepping out of her postal vehicle. A physical examination revealed negative side compression and pain on foot dorsiflexion.

In progress notes and a status report dated March 9, 2012, Dr. Rhonda A. Richards, an examining Board-certified internist, diagnosed pain in limb and fracture of unspecified foot bone(s) except the toes. Appellant was released to return to work that day with restrictions of no prolonged standing or walking more than 10 minutes an hour. She reported that a March 7, 2012 magnetic resonance imaging (MRI) scan revealed a nondisplaced third metatarsal proximal stress fracture. Dr. Richards stated that ankle flexion caused foot pain and physical findings of no foot swelling, tenderness over the third metatarsal based and mild to moderate limp. She noted that appellant was currently not working because light-duty work was not available.

On March 23, 2012 OWCP received appellant's answers to questions it posed regarding the incident and why she did not immediately file a claim. It asked why appellant believed that

she sustained a traumatic injury when stepping out of the vehicle when there was no evidence that she slipped, tripped, fell or struck her foot. Appellant responded that she sustained a traumatic injury because she had never before experienced such foot pain. She related that she continued with her deliveries despite her pain. Appellant did not immediately report the incident as she believed the pain was temporary.

By decision dated April 19, 2012, OWCP denied appellant's claim on the grounds that she failed to establish that the event occurred as alleged.²

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing the essential elements of his 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.⁴ 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.⁵

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.⁶ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

ANALYSIS

Appellant filed a traumatic injury claim alleging that she sustained a right foot injury on February 13, 2012 in the performance of duty. OWCP denied her claim on the grounds that she failed to establish that the incident occurred as alleged. The issue before the Board is whether appellant has established the factual aspect of her claim.

² The Board notes that, following the April 19, 2012 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. See 20 C.F.R. §§ 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

³ *Supra* note 1.

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

⁷ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁸ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an employment-related right foot injury on February 13, 2012. The record does not support her allegation that a specific event occurred which caused an injury.⁹ On her claim form, appellant noted that she sustained foot pain after stepping out of her postal vehicle. She did not allege that she fell, tripped, slipped or struck her right foot. Appellant did not inform her supervisor of the incident and indicated that she continued to deliver mail. She did not seek any medical treatment until approximately a week later. Appellant first sought medical treatment on February 22, 2012 due to her ongoing right foot pain and difficulty using her right foot while driving from work. The record contains no description of any trauma to her foot and she did not allege that she sustained any trauma. Although appellant attributed her foot pain to stepping out of the postal vehicle onto the pavement, she continued with her work duties that day. The Board has held the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.¹⁰

In addition, none of the medical reports explain the mechanism of injury. A February 22, 2012 medical report by Dr. Faber diagnosed foot pain of unknown etiology. Dr. Richards diagnosed limb pain and a fracture, but offered no opinion as to a specific injury date or the cause of the diagnosed conditions. Both Drs. Allen and Saunders recounted appellant's account of experiencing extreme pain over the top of her foot on February 13, 2012 when she stepped out of her vehicle. They did not offer any opinion as to the cause of appellant's foot pain. Appellant did not submit sufficient evidence to establish that she experienced a specific traumatic event or incident at work on February 13, 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 had not met her burden to establish that she sustained an injury in the performance of duty on February 13, 2012.

⁹ *Paul Foster*, 56 ECAB 208 (2004).

¹⁰ *See Alberta S. Williamson*, 47 ECAB 569 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 19, 2012 is affirmed.

Issued: January 2, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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