United States Department of Labor
Employees' Compensation Appeals Board

S.M., Appellant	)	
and	)	**Docket No. 13-1140**
	)	**Issued: July 23, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Port Hueneme, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 10, 2013 appellant filed a timely appeal of an October 12, 2012 Office of Workers' Compensation Programs' (OWCP) merit decision denying her claim for a traumatic injury. 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 met her burden of proof to establish that she sustained a traumatic injury on January 21, 2012 in the performance of duty, as alleged.

FACTUAL HISTORY

On January 21, 2012 appellant, then a 29-year-old city carrier, filed a traumatic injury claim alleging that on that date she was walking and delivering mail at 12:30 p.m. and felt a sharp pain going down her left leg. She claimed a low back strain.

[1] 5 U.S.C. § 8101 *et seq.*

In form reports dated January 21, 23 and 30, 2012, Dr. Bernard McDermott, an osteopath, diagnosed sprain of the lumbar region. He obtained a history that, while at work walking with her mail satchel, appellant experienced a sharp pain in her lower left lumbar spine radiating into her left leg. Dr. McDermott indicated with a checkmark "yes" that appellant's findings were consistent with her statement. He added the diagnosis of sprain of the knee and leg in subsequent reports.

In a letter dated February 29, 2012, OWCP advised appellant that, when her claim was initially received, it appeared to be a minor injury and that payment of a limited amount of medical expenses were administratively approved. It reopened her claim for adjudication as she had not returned to full duty. OWCP requested additional factual and medical evidence in support of appellant's claim.

Dr. Evan S. Marlowe, a physician Board-certified in physical medicine and rehabilitation, examined appellant on February 29, 2012. He listed a history that, on January 21, 2012, while walking, she developed pain in her left leg. Dr. Marlowe noted appellant's job duties of delivering mail, lifting up to 50 pounds and constant pushing and pulling. He diagnosed low back pain with bilateral radicular symptoms worse on the left. Dr. Marlowe stated, "In reviewing the patient's history and examination today, it appears that the patient did sustain an injury to the low back arising out of and caused by the industrial exposure of January 21, 2012."

By decision dated April 4, 2012, OWCP denied appellant's claim finding that she had not established the factual element of how her employment incident occurred.

Appellant requested an oral hearing before an OWCP hearing representative on April 18, 2012. She submitted a factual statement alleging that at 12:30 p.m. on January 21, 2012 she delivered mail to 129 East A Street. Appellant stated, "As I walked from the grass and stepped onto the sidewalk, I felt a sharp pain in my left leg. I continued to deliver mail hoping the pain would subside. And it did for a while, and then approximately one hour later I started to feel numbness and tingling in my left leg. My lower back began to hurt and suddenly there was pain again and it was constant and intense."

Appellant testified at the August 15, 2012 oral hearing. She described the employment incident on January 21, 2012 as walking her route from her last delivery from "143 East Eighth Street to 127, 129." Appellant stated that there was a cement divider that she stepped over and that she stepped "wrong." When making her next delivery she felt pain. Appellant further stated that there was a cement block and she stepped on it and then stepped down to the grass and twisted her ankle and continued walking, experiencing pain.

Following the oral hearing, appellant submitted an April 17, 2012 note from Dr. Henry K. Liao, a Board-certified family medicine practitioner, who examined her on April 6, 2012 due to back pain with associated numbness and tingling. Dr. Liao stated that she reported injuring her back on January 21, 2012 while delivering mail. Appellant stated that she was walking and experienced a sharp pain in her back which radiated down to her left leg.

On September 12, 2012 Russ Partee, appellant's postmaster, stated that he had investigated the location of 127 -- 129 A Street and did not locate a cement divider or cement

block between the addresses. He stated, "In fact, the walkway between the addresses as well as the area walking up to the mailboxes at 127 A Street is a flat concrete sidewalk." Mr. Partee contended that appellant had provided conflicting accounts of how her injury occurred.

By decision dated October 12, 2012, OWCP's hearing representative found that appellant had not submitted sufficient factual evidence to establish that the January 21, 2012 employment incident occurred as alleged.[2]

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 member or function of the body affected."[3] 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.[4] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

With respect to the first component of fact of injury, the 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 or her 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. However, 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.[5]

[2] On appeal, appellant submitted new evidence. As OWCP did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

[3] 20 C.F.R. § 10.5(ee).

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

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

ANALYSIS

In its October 12, 2012 decision, OWCP found that appellant did not establish that the January 21, 2012 incident occurred at the time, place and in the manner alleged. The Board finds, however, that the evidence of record is sufficient to establish that the January 21, 2012 incident occurred as alleged.

Appellant filed a traumatic injury claim on January 21, 2012 stating that while she was walking and delivering mail at 12:30 p.m. she experienced pain to her back going down her left leg. She sought medical treatment on that date. On January 21, 2012 Dr. McDermott obtained a history from appellant that, while walking with her mail satchel, she experienced a sharp pain in her lumbar spine radiating into her left leg. On February 29, 2012 he listed her history of injury as developing pain in her left leg while walking on January 21, 2012. Appellant submitted a factual statement alleging that at 12:30 p.m. on January 21, 2012 she felt a sharp pain in her left leg as she walked from the grass and stepped on to a sidewalk. Approximately an hour later, she experienced numbness and tingling in her left leg as well as her lower back. At the oral hearing, appellant described the January 21, 2012 employment incident as occurring while walking her route. She stepped over a cement divider down to the grass. Appellant stated that she twisted her ankle and continued walking, but did not feel that twisting her ankle was the cause of her pain. Dr. Liao examined her April 6, 2012 and stated that she reported injuring her back on January 21, 2012 while delivering mail. Appellant stated that she was walking and felt a sharp pain in her back which radiated down to her left leg.

Appellant has provided a consistent account of the mechanism of the employment incident, reported it to her supervisor, filed a traumatic injury claim form and sought medical treatment on the same date. She described the employment incident in the same manner in her narrative statement and to her physicians.[6]

Following appellant's testimony at the oral hearing, appellant's supervisor controverted her claim stating that he had investigated the location of 127 -- 129 A Street and did not locate a cement divider or cement block between those addresses. He asserted that these addresses were connected by a flat concrete sidewalk. As previously noted, 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. There is no evidence in the record, such as inconsistent statements, late notification of injury or failure to obtain medical treatment, to refute appellant's description of the employment incident. While appellant's supervisor indicated that he could not find a cement curb or block between the two residences, appellant did not attribute her injury to the concrete divider and twisting her ankle but to walking her route.

The Board finds that the medical evidence is insufficient to establish that the employment incident caused an injury. The medical evidence contains no reasoned explanation of how the employment incident of January 21, 2012 caused or aggravated a back injury.[7]

[6] *K.J.*, Docket No. 13-271 (issued May 23, 2013).

[7] *S.P.*, Docket No. 12-1216 (issued February 5, 2013).

Dr. McDermott indicated with a checkmark "yes" that appellant's findings were consistent with her statement. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[8]

Dr. Marlowe diagnosed low back pain with bilateral radicular symptoms worse on the left. He opined that appellant sustained low back injury arising out of and caused by the industry employment incident of January 21, 2012. While Dr. Marlowe provided a history of injury and opinion on causal relationship, he did not provide sufficient medical reasoning to explain how appellant's employment activity of walking caused or aggravated her low back condition.

The medical records submitted by appellant do not provide a physician's opinion addressing causal relationship supported with medical reasoning. The medical reports submitted to the record do not adequately address the cause of her back condition. They are insufficient to establish that the January 21, 2012 employment incident caused or aggravated a back injury.

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 not met her burden of proof in establishing that she sustained an injury in the performance of duty on January 21, 2012, as alleged.

[8] *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

ORDER

IT IS HEREBY ORDERED THAT the October 12, 2012 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: July 23, 2013
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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