

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

S.W., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
FEDERAL EMERGENCY MANAGEMENT
AGENCY, Hyattsville, MD, Employer**

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**Docket No. 13-572
Issued: June 13, 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
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 15, 2013 appellant filed a timely appeal of an October 25, 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 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 in the performance of duty on August 31, 2012.

FACTUAL HISTORY

On September 2, 2012 appellant, then a 76-year-old human service specialist, filed a traumatic injury claim alleging that she sustained a leg contusion in the performance of duty on August 31, 2012. She struck her leg on a desk cabinet resulting in swelling. Appellant missed no time from work.

¹ 5 U.S.C. § 8101 *et seq.*

The employing establishment submitted an e-mail dated August 31, 2012 from Angie Gonzalez noting that at 8:30 a.m. she observed a small cut to appellant's left shin with swelling. Appellant reported to Ms. Gonzalez that she hit her leg on a metal cabinet under her desk. Tanya Willis submitted a similar e-mail on August 31, 2012 noting that appellant had a cut on her shin and swelling. Appellant also told Ms. Willis that she hit her leg on the metal cabinet.

In a letter dated September 12, 2012, OWCP requested additional factual and medical evidence in support of appellant's claim. It allowed 30 days for a response.

Appellant sought medical treatment. Dr. Ewane Ngone, a family practitioner, examined her on September 6, 2012 and diagnosed a contusion of the lower extremity.

By decision dated October 25, 2012, OWCP denied appellant's traumatic injury claim. It found that she failed to submit any medical evidence providing a medical diagnosis. OWCP noted that appellant submitted medical evidence of a leg contusion, without identifying which lower extremity was injured.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and 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 or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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."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. 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.⁶ Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.⁷

² 5 U.S.C. §§ 8101-1893.

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ 20 C.F.R. § 10.5(ee).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *J.Z.*, 58 ECAB 529 (2007).

ANALYSIS

Appellant filed a notice of traumatic injury alleging she sustained a leg contusion on August 31, 2012 when she struck her leg on a metal cabinet resulting in swelling. OWCP accepted that the traumatic incident occurred as alleged, but found that she failed to submit sufficient medical evidence to establish an injury as a result of this incident. Appellant submitted witnesses' statements that she sustained a small cut to her left shin. She further submitted medical evidence of unspecified leg contusion. The Board finds that appellant's claim falls into the category of cases that can be established without a physician's report. Appellant's condition, identified as a cut with swelling on the left shin, could be identified on visual inspection by a lay person. OWCP's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.⁸ The Board finds that appellant has met her burden to establish a cut to her left shin on August 31, 2012.⁹

CONCLUSION

The Board finds that appellant sustained an injury on August 31, 2012.

ORDER

IT IS HEREBY ORDERED THAT the October 25, 2012 decision of the Office of Workers' Compensation Programs is set aside and remanded.

Issued: June 13, 2013
Washington, DC

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

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

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

⁸ *Janice Guillemette*, 54 ECAB 780 (2003).

⁹ *See T.B.*, Docket No. 12-737 (issued November 14, 2012).