

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

T.M., Appellant

and

**GENERAL SERVICES ADMINISTRATION,
PUBLIC BUILDING SERVICE,
Washington, DC, Employer**

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**Docket No. 13-577
Issued: June 13, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 9, 2013 appellant filed a timely appeal of an August 1, 2012 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.²

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 May 1, 2012.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the August 1, 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).

FACTUAL HISTORY

On May 29, 2012 appellant, then a 44-year-old architect/project manager, filed a traumatic injury claim alleging that on May 1, 2012 she sustained injuries to her right ankle and knee, left knee, left shoulder, neck and large bruise on her chest as the result of a vehicular accident. The accident occurred when a vehicle ran a red light and hit her vehicle as she was leaving a contractor's office.

In support of her claim, appellant submitted an appointment reminder for her physical therapy appointments in May and June 15, 2012 and a copy of the police report for the accident.

OWCP informed appellant in a June 11, 2012 letter that additional evidence was needed to establish her claim. It gave her 30 days to furnish medical reports from a physician explaining how the May 1, 2012 accident contributed to a diagnosed condition.³ OWCP did not receive a response.

By decision dated August 1, 2012, OWCP denied appellant's claim. It found the factual evidence sufficient to establish that the May 1, 2012 incident occurred at the time, place and in the manner alleged, but found that appellant failed to submit any medical evidence establishing an injury causally related to the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 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.⁵ 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.⁶

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.⁷ 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.⁸ Second, the

³ In a separate June 11, 2012 letter, OWCP advised appellant that the circumstances of her case indicated that her injury may have been caused by a responsible third party and that she may be subject to FECA's subrogation provisions. See 5 U.S.C. §§ 8131-8192; 20 C.F.R. §§ 10.705-10.719.

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁶ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 5.

⁸ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹

ANALYSIS

The evidence of record supports that appellant's motor vehicle was struck by another vehicle which had run a red light on May 1, 2012 while she was in the performance of duty. However, appellant failed to provide any medical reports establishing that she sustained an employment injury. OWCP advised her in a June 11, 2012 letter to furnish these reports within 30 days. As no medical evidence was offered to show that the accepted May 1, 2012 employment incident caused or contributed to a diagnosed right ankle and knee, left knee, left shoulder, neck and large chest bruise, the Board finds that appellant has failed to establish her *prima facie* claim for compensation.

Appellant contends on appeal that she supplied medical reports to OWCP. As noted, the evidence of record at the time of the August 1, 2012 decision does not contain any such documentation.

CONCLUSION

The Board finds that appellant did not establish that she sustained a traumatic injury in the performance of duty on May 1, 2012.

⁹ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 1, 2012 is affirmed.

Issued: June 13, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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