

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

A.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Rancho Cucamonga, CA, Employer)

Docket No. 13-669
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
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On January 30, 2013 appellant filed a timely appeal from a January 7, 2013 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 sustained an injury on November 13, 2012 in the performance of duty.

FACTUAL HISTORY

On November 16, 2012 appellant, then a 39-year-old rural carrier, filed a traumatic injury claim alleging that on November 13, 2012 she sprained her left ankle stepping off a curb. She stopped work on November 14, 2012.

¹ 5 U.S.C. § 8101 *et seq.*

On November 14, 2012 a physician's assistant found that appellant should be off work on November 15, 2012 and return to modified work from November 16 through 29, 2012. He provided her with crutches and indicated that she could resume her usual employment on November 30, 2012.

By letter dated December 4, 2012, OWCP advised appellant that it had initially paid medical expenses as her injury appeared minor with no significant time lost from work. It informed her that it was now adjudicating the merits of her claim and requested that she submit a medical report from a physician explaining how the November 13, 2012 work incident caused or aggravated a diagnosed condition.

In a decision dated January 7, 2013, OWCP denied appellant's claim after finding that the medical evidence was insufficient to show that she sustained an injury as alleged. It determined that she had not submitted any medical evidence from a physician.

On appeal appellant maintains that she provided a November 14, 2012 medical report to her supervisor, but that report was not sent to OWCP.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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.³ 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.⁴

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁶ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁷

² *Id.*

³ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁴ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁷ *Id.*

ANALYSIS

Appellant alleged that she sustained an injury to her ankle on November 13, 2012 stepping off a curb. OWCP accepted that the incident occurred at the time, place and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that she sustained an injury as a result of this incident.

The Board finds that appellant has not established that the November 13, 2012 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.⁸ In support of her claim, appellant submitted a November 14, 2012 report from a physician's assistant. The report of a physician's assistant, however, is entitled to no weight as a physician's assistant is not a "physician" as defined by section 8101(2) of FECA.⁹ Thus, this evidence is insufficient to meet appellant's burden of proof.

By letter dated December 4, 2012, OWCP advised appellant that she needed to submit medical evidence from a physician addressing her condition and its relationship to the November 13, 2012 work incident. She did not, however, respond to OWCP's request within the allotted time. As appellant did not provide the medical evidence necessary to substantiate her claim, she has not met her burden of proof. OWCP, therefore, properly denied her claim for compensation.

On appeal appellant asserts that she provided a medical report from a physician to her supervisor but it was not forwarded to OWCP. She submitted medical evidence subsequent to OWCP's January 7, 2013 decision. The Board has no jurisdiction to review new evidence on appeal.¹⁰ Appellant may submit this evidence and any argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury on November 13, 2012 in the performance of duty.

⁸ *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

⁹ *See* 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551 (2002).

¹⁰ *See* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board