

FACTUAL HISTORY

On December 7, 2012 appellant, then a 34-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging a back injury that radiated into her buttocks and legs while assisting a resident into a sitting position in the performance of duty on November 4, 2012.

In a December 19, 2012 letter, OWCP notified appellant of the deficiencies of her claim. It requested additional factual and medical evidence. OWCP afforded her 30 days to submit additional evidence and respond to its inquiries. Appellant did not respond.

By decision dated January 25, 2013, OWCP accepted that the November 4, 2012 incident occurred as alleged but denied the claim finding that appellant failed to submit evidence containing a medical diagnosis in connection with the injury or events. It found that she did not establish fact of injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 timely filed within the applicable time limitation period of FECA, that an injury⁴ was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.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. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁶

ANALYSIS

OWCP has accepted that the employment incident of November 4, 2012 occurred at the time, place and in the manner alleged. The issue is whether appellant sustained an injury as a

³ 5 U.S.C. §§ 8101-8193.

⁴ OWCP regulations define 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. 20 C.F.R. § 10.5(ee).

⁵ See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Id.* See also *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

result of the employment incident. The Board finds that she did not establish an injury in connection with the November 4, 2012 employment incident.

In a December 19, 2012 letter, OWCP notified appellant of the deficiencies of her claim and requested additional factual and medical evidence. It afforded her 30 days to submit additional evidence and respond to its inquiries. She did not respond within the allotted time. As appellant has not submitted any medical evidence to support her allegation that she sustained an injury related to the November 4, 2012 employment incident, she has failed to meet her burden of proof.⁷

The Board notes that, following the issuance of the January 25, 2013 OWCP decision, appellant submitted new medical evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision.⁸ Appellant may submit that evidence or 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 to establish an injury in the performance of duty on November 4, 2012, as alleged.

⁷ See *Donald W. Wenzel*, 56 ECAB 390 (2005).

⁸ See *supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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