

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

N.H., Appellant)

and)

**DEPARTMENT OF HEALTH & HUMAN)
SERVICES, CROW/NORTHERN CHEYENNE)
INDIAN HEALTH SERVICE,)
Crow Agency, MT, Employer)**

**Docket No. 14-682
Issued: August 20, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 6, 2014 appellant filed a timely appeal from the September 5, 2013 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 to review the merits of this case.

ISSUE

The issue is whether appellant sustained a traumatic injury in the performance of duty on October 20, 2012, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 22, 2012 appellant, a 53-year-old public health nurse, filed a traumatic injury claim alleging that she injured her right foot or ankle in the performance of duty on October 20, 2012 when she struck it hard against her chair: “I was sitting at my desk, entering Flu Clinic Visits into computer October 20, 2012 when I had to go to the bathroom. I had my foot elevated with ice. As I swung my foot down, I hit the chair roller hard. I stood up and limped to the bathroom.” She stated that she came back to her office, reapplied ice to the site and when she completed her data entry, she limped to her car to drive home. Appellant then went to the emergency room.

At the emergency room, the history of present illness was described as follows: “53[-year-old female] with [history] of ‘tendinitis’ of [right] ankle. [Patient] states she has been receiving steroid shots in ankle. [P]ain worse today. [Patient] denies ankle trauma. [N]o swelling or bruising.” A physical examination of appellant’s right lower extremity revealed tenderness of the Achilles tendon. She received a diagnosis of Achilles bursitis or tendinitis. A radiology report that day noted that appellant had distal posterior tibia/fibula pain with no known injury. “Hurt when pt stood up today.”

On November 12, 2012 appellant offered her medical provider the following history of injury: “[Appellant] previously had medial heel pain, treated on 2 occasions by Dr. Wolf with plantarflexion injection. She had this elevated and [on] ice and then stood up suddenly and [she] everted her ankle. [Appellant] developed medial bruising and swelling.” She was diagnosed with ankle sprain.

The history on January 8, 2013 stated that appellant had an episode where her ankle gave way and she injured the ankle, with bruising and swelling medially.

In a decision dated April 5, 2013, OWCP denied appellant’s traumatic injury claim. It found that there were discrepancies and contradictions in her statements and in the medical evidence describing the traumatic incident of October 20, 2012.

Appellant requested a review of the written record by an OWCP hearing representative. She indicated that she did not hit the desk prior to hitting the chair with her right ankle. “When I stood up, my ankle was unable to support my weight.” Appellant explained that she did have her leg elevated with ice due to plantar fasciitis, not ankle tendinitis.

In a decision dated September 5, 2013, the hearing representative affirmed the denial of appellant’s injury claim. Noting the different histories of injury, the hearing representative found that there was insufficient evidence that the October 20, 2012 incident occurred as alleged.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² An employee seeking benefits under FECA

² 5 U.S.C. § 8102(a).

has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.³

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.⁴

To establish that, an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁵

ANALYSIS

When appellant went to the emergency room on October 20, 2012, after she drove home from work, she told her medical providers that she had a history of right ankle tendinitis, for which she had been receiving steroid shots. She advised that the pain was worse. Significantly, appellant denied any ankle trauma. There was no swelling or bruising. A radiology report noted pain with no known injury and indicated that it simply hurt when appellant stood up that day.

Two days later, appellant filed a traumatic injury claim for workers' compensation benefits. The history she provided on her claim form did not resemble the history she had given the emergency room. Appellant described a right foot or ankle trauma that occurred when she swung her foot down from an elevated position and hit the roller of her chair hard, causing her to limp noticeably. She did not explain why she had denied any trauma or injury at the emergency room.

The history changed again on November 12, 2012 when appellant advised that she stood up suddenly and everted her ankle, which caused bruising and swelling. As noted earlier, however, her examination in the emergency room revealed no bruising or swelling. There was now no mention of striking appellant's foot or ankle hard against the roller of her chair. On January 8, 2013 she repeated that she injured her ankle when it gave way.

The inconsistency with which appellant has described the circumstances of her injury casts serious doubt on the validity of her claim that she sustained a traumatic injury on October 20,

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Caroline Thomas*, 51 ECAB 451 (2000).

⁵ *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984). See also *George W. Glavis*, 5 ECAB 363 (1953).

2012 in the manner alleged. She has not satisfactorily reconciled the inconsistent accounts she provided from October 10 to November 12, 2012. The Board finds that appellant has not met her burden of proof to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Accordingly, the Board will affirm OWCP's September 5, 2013 decision denying her claim of a traumatic work injury.

CONCLUSION

The Board finds that appellant has not met her burden to establish a traumatic injury in the performance of duty on October 20, 2012, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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