

FACTUAL HISTORY

On April 25, 2013 appellant, then a 43-year-old custodian, filed a traumatic injury claim alleging that on April 6, 2013 she was picking up trash to take to the dumpster when she felt a sharp pain in her stomach and in her lower abdomen area.²

In an undated statement received by OWCP on May 1, 2013, appellant indicated that she was injured on April 7, 2013 when she was picking up trash and leaves and putting them into the dumpster.

By letter dated April 25, 2013, the employing establishment, through her supervisor for customer services, controverted appellant's claim. The supervisor indicated that on April 24, 2013 appellant informed him that she got hurt working in front of the employing establishment. He indicated that, when she wrote her statement, she listed the date of injury as April 17, 2013, yet she had not reported the accident to anyone. The supervisor also indicated that appellant sent him a text message saying that she was in pain and was going to the physician, but did not indicate that she got hurt at work. He noted that she returned to work on April 22, 2013 and did not say anything about the accident, had a personal appointment on April 23, 2013 and was gone all day, then submitted a CA-1 on April 25, 2013 listing the date of the accident as April 6, 2013. The supervisor noted that appellant listed three different dates for an injury in April 2013. He also noted that she has her own custodial business. Furthermore, the supervisor contended that the medical documents do not establish that appellant's injury was employment related. He concluded that none of her evidence was reliable, probative or substantial.

In an April 19, 2013 work status report, Dr. Malini Chandrakant Shah, a Board-certified family practitioner, diagnosed abdominal pain and placed appellant off work from April 15 through 19, 2013. He listed the date for onset of the condition as April 15, 2013. In an April 26, 2013 doctor's first report of occupational injury or illness form, Dr. Julie Marie Nefkens, an internist, stated that appellant was a custodian with left lower quadrant pain for two weeks of unclear etiology. She listed the date of onset as April 6, 2013. Dr. Nefkens diagnosed strain of the groin (left lower quadrant). She indicated that the findings were consistent with appellant's statement that she was injured while doing yard work in front of employing establishment, picking up trash and putting it in a container to take to the back of office.

In a letter dated May 20, 2013, OWCP stated that, when appellant's claim was first received, it appeared to be a minor injury that resulted in minimal or no lost time from work and payment of a limited amount of medical expenses was administratively approved. However, now that the employing establishment controverted the claim, it has been reopened for consideration. OWCP asked appellant to clarify the date and mechanism of injury and provide a physician's opinion supported by a medical explanation linking her injury to the stated employment factors.

² Appellant also filed another claim on April 25, 2013, alleging that she injured her left ankle and foot on April 24, 2013 while she was trying to stop the buffer. There is no final decision contained in the record regarding this claim. As such, it is not before the Board on this appeal. See 20 C.F.R. § 501.2(c).

Appellant submitted an undated response to a notice of separation from the employing establishment. She described her work in landscaping and cleaning. Appellant noted that she was the only person responsible for cleaning the interior and exterior of a 5,447 square foot building with a 6,576 square foot lot and was also responsible for cleaning another branch once a week and to float to other buildings as necessary. She noted that on April 13, 2013 at approximately 8:30 a.m. she was doing yard work and cleaning up the exterior of the building and, while cleaning debris out of bushes and yard and lifting the rubbish bag to her cart to take to the dumpster, she felt a sharp pain in her groin and breast area. Appellant stopped to catch her breath but then continued to work. She stated that she went inside and informed the supervisor that she was not feeling well. Appellant indicated that she followed up on April 15, 2013 with her primary physician, who administered medication. She stated that she called the supervisor three times and he did not answer so she texted him to let him know that she was at the hospital. Appellant noted that on April 16, 2013 she went back to the hospital and saw a specialist and that she had attempted to call the supervisor to ask about forms and procedures but he never called her back. She alleged that she left a message on April 18, 2013 for him to call her back because she had physician's order to not work. The supervisor called appellant late Thursday, asked how she felt and told her not to worry, but she stated that she was fired anyway. Appellant disputed the facts that she had not stated that the accident happened on April 6, 2013 and that she had not stated that she injured her back.

In a May 6, 2013 statement, Dr. David A. Wender, an osteopath, indicated that appellant sustained a strain of her groin and that she was placed on modified activity at work and home from May 6 through 22, 2013. He listed the date of injury as April 6, 2013. Dr. Wender noted that "the stated mechanism is consistent with my clinical exam[ination] findings and no information has been presented that would indicate a cause other than the alleged employment event."

In a decision dated June 20, 2013, OWCP denied appellant's claim because she had not established that the event occurred as alleged.

On June 25, 2013 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. At the hearing held on November 21, 2013, she testified that the actual date of injury was April 13, 2013. Appellant stated that she was initially confused about the date of injury, but determined that it was April 13, 2013 because she had to work an extra shift on that Saturday doing yard work in the back of the building for the majority of the time. She noted that after throwing a number of bags she started feeling discomfort "down below," that she finished her shift and went to find her manager and let him know what happened but she was unable to locate him so she left a note underneath his door. Appellant noted that she had the next day off because it was a Sunday, but when she went back to work on Monday she tried to tell him what happened. She testified that she first got treatment at the emergency room on April 13, 2013. Appellant stated that there was a delay in filing her claim because she was told that she could only file it with her immediate supervisor. She noted that, although she tried to contact her supervisor, starting on April 15, 2013 and continued to try to reach him on multiple dates, he was not there or she could not get a hold of him, so she was unable to make a report until April 25, 2013. Appellant noted that, shortly thereafter, she was relieved of her duties.

By decision dated January 13, 2014, the hearing representative affirmed the June 20, 2013 decision.

LEGAL PRECEDENT

An employee who claims benefits under FECA 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 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.⁵ 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 of medical evidence, to establish that the employment incident caused a personal injury.⁷

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁸ An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁹ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.¹⁰ However, 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.¹¹

³ C.S., Docket No. 08-1585 (issued March 3, 2009).

⁴ S.P., 59 ECAB 184 (2007).

⁵ B.F., Docket No. 09-60 (issued March 17, 2009).

⁶ D.B., 58 ECAB 464 (2007).

⁷ C.B., Docket No. 08-1583 (issued December 9, 2008); D.G., 59 ECAB 734 (2008).

⁸ M.H., 59 ECAB 461 (2008); *George W. Glavis*, 5 ECAB 363, 365 (1953).

⁹ S.P., *supra* note 4; *Gus Mavroudis*, 9 ECAB 31, 33 (1956).

¹⁰ *Barbara R. Middleton*, 56 ECAB 634 (2005).

¹¹ S.P., *supra* note 4; *Wanda F. Davenport*, 32 ECAB 552, 556 (1981).

ANALYSIS

The Board finds that appellant failed to establish a traumatic injury in the performance of duty, as alleged. Although a claimant need not have witnesses to his or her accident, his or her behavior must be consistent with the surrounding circumstances. Appellant's statements and the record are so inconsistent that they cast serious doubt as to whether the incident took place in the manner alleged. The major inconsistency in the record concerns the date of her injury. The claim form submitted by appellant lists the date of injury as April 6, 2013. The handwritten statement, possibly the statement she indicated that she placed a note under her supervisor's door, lists the date as April 7, 2013.¹² Appellant testified at the hearing that the incident occurred on April 13, 2013. Accordingly, there are three possible injury dates: April 6, 7 and 13, 2013. The medical evidence is also not consistent with regard to the date of injury. Dr. Shah lists the date of onset as April 15, 2013, whereas Dr. Nefkens and Dr. Wender list the date of injury as April 6, 2013.

The doubt with regard to the date of the employment accident is further compounded by the fact that appellant did not file her claim until April 25, 2013. Appellant's explanation for this delay is not persuasive. She alleges that she continued to work through April 25, 2013, yet she stated that she could not find her supervisor to file the claim until April 25, 2013. Appellant indicated that she talked to another supervisor about the issue, but could not state that supervisor's name. There is no statement in the record by a party other than her verifying that she reported the injury to anyone at work before April 24, 2013. Furthermore, appellant testified at the hearing that she went to the emergency room after her shift ended on April 13, 2013 and received medical care on April 15, 2013. However, the first medical report in the record is the April 19, 2013 report of Dr. Shah. In this report, Dr. Shah notes that appellant experienced abdominal pain, but does not indicate that this is employment related. The first medical report to discuss the alleged employment incident is Dr. Nefken's April 26, 2013 form report, a report written between 13 to 20 days after the alleged incident.

All of these factors establish a level of inconsistency with regard to the circumstances of the alleged incident and cast serious doubt as to whether the injury occurred as alleged. Accordingly, as appellant has not established that the incident occurred in the performance of duty as alleged, she has not met her burden of proof.

CONCLUSION

The Board finds that appellant has not met the burden of proof to establish that she sustained a traumatic injury in the performance of duty in April 2013, as alleged.

¹² This statement appears to be the one that OWCP and the supervisor mistakenly refer to as being dated April 17, 2013.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 13, 2014 is affirmed.

Issued: August 8, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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