

while she was turning the steering wheel. Appellant's elbow hurt for a short time and, after the pain was gone, she forgot about it. On the reverse side of the claim form, appellant's supervisor stated that it was unknown as to whether she had sustained the alleged injury in the performance of duty. No other documents were submitted.

In a letter dated August 6, 2013, OWCP advised appellant that the evidence of record was insufficient to support her claim. Appellant was afforded 30 days to submit supporting documentation regarding the factual aspects of the claim and to submit medical reports to support her injury with a diagnosis.

In a September 3, 2013 report, Dr. Helo Chen, an osteopath, indicated that appellant presented on July 22, 2013 for evaluation of left elbow and left hand pain from a traumatic work-related accident. Appellant reported that while at work on June 27, 2013, she was labeling mailboxes while on route when the wind blew the vehicle door closed, slamming the latch into her left elbow.² She continued her route, feeling stiff and sore. The pain increased in appellant's left elbow. She reported increase of symptoms to her supervisor. Appellant also reported that she had initially suffered a traumatic work injury on December 17, 2012, when she was on route delivering mail when she turned the steering wheel too far, causing a jolt to her left arm. The pain in her left arm subsided and she did not seek medical treatment or report the incident to her supervisor. On July 22, 2013 appellant filed a traumatic injury claim to her left elbow and left hand and was advised by her supervisor to file a traumatic injury claim for the December 17, 2012 incident. Dr. Chen provided examination findings and results of diagnostic studies. He diagnosed left elbow epicondylitis, left elbow internal derangement, and left hand sprain due to the work-related injury of June 27, 2013. Appellant was placed on modified duty.

By decision dated September 11, 2013, OWCP denied the claim on the grounds fact of injury had not been met. It found the evidence sufficient to establish the event occurred as described and there was no medical evidence containing a medical diagnosis due to the alleged injury or event.

In a September 11, 2013 letter, the employing establishment challenged appellant's claim for the July 22, 2013 work injury.

On October 9, 2013 appellant, through her attorney, requested a telephonic hearing, which was held April 15, 2014. At the hearing, she testified that she was not going to file a claim for the December 17, 2012 work injury as she was having a problem with the manager, Fred Masten, who was trying to fire her at that time and she was fearful that if she filed a claim, things would become worse. Appellant first sought treatment for her elbow in July with Dr. Chen, who informed her that she had bursitis in her elbow. She indicated that she got bursitis in her elbow when she was making a sharp turn with her vehicle and as she was turning the wheel sharply to the left, the truck jumped and this caused her left elbow to pop. Appellant had suffered a second injury to her left elbow on June 27, 2013.³ Both the hearing representative and appellant's attorney noted that there was no medical evidence on this claim.

² This injury was handled under claim number xxxxxx589.

³ *Id.*

By decision dated June 27, 2014, an OWCP hearing representative affirmed the September 11, 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.⁴ 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.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.⁶ 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.⁷ 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.⁸

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.⁹ 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.¹⁰ 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.¹¹ 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.¹²

⁴ C.S., Docket No. 08-1585 (issued March 3, 2009).

⁵ S.P., 59 ECAB 184 (2007).

⁶ B.F., Docket No. 09-60 (issued March 17, 2009).

⁷ D.B., 58 ECAB 464 (2007).

⁸ C.B., Docket No. 08-1583 (issued December 9, 2008); D.G., 59 ECAB 734 (2008).

⁹ M.H., 59 ECAB 461 (2008); *George W. Glavis*, 5 ECAB 363, 365 (1953).

¹⁰ S.P., *supra* note 3; *Gus Mavroudis*, 9 ECAB 31, 33 (1956).

¹¹ *Barbara R. Middleton*, 56 ECAB 634 (2005).

¹² S.P., *supra* note 3; *Wanda F. Davenport*, 32 ECAB 552, 556 (1981).

ANALYSIS

OWCP denied appellant's claim for a December 17, 2012 work injury as fact of injury had not been established. It found that appellant failed to establish through probative factual and medical evidence that she sustained a work injury on December 17, 2012 or a medical condition in connection with a December 17, 2012 injury.

On July 22, 2013, approximately seven months after the alleged injury, appellant filed a claim for the December 17, 2012 work injury. She noted on her CA-1 claim form that her elbow hurt for a short time and after the pain was gone, she forgot about it. Appellant did not seek medical care or report this injury to her supervisor until she injured her left elbow at work on June 27, 2013. She provided two different explanations for her delay in reporting the December 17, 2012 work injury. Appellant explained to Dr. Chen that when she filed a traumatic injury claim for the June 27, 2013 work injury, her supervisor told her she had to file a traumatic claim for the December 17, 2012 work injury. She also testified that she did not file a claim for the December 17, 2012 injury as she was having a problem with the manager, who was trying to fire her and she was fearful that if she had filed a claim, things would have become worse.

The Board finds that appellant has 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. While appellant appears to give a consistent history of the December 17, 2012 incident, her explanation as to why the incident was not reported until seven months later casts serious doubt as to whether the incident took place in the manner alleged. The primary inconsistency in the record concerns the explanation as to her delay in reporting the incident. Appellant did not report the injury until July 2013, approximately seven months after the alleged incident. The first mention of the December 17, 2012 incident was during her July 22, 2013 visit to Dr. Chen which limits the probative value of Dr. Chen's opinion in this claim. While appellant explained that she did not file a claim at the time of the incident because of fear of reprisal from her manager, her explanation for this delay is not persuasive. There is no statement in the record of a party other than appellant verifying that she reported the December 17, 2012 incident to anyone at work.

Furthermore, the evidence of record does not indicate that appellant stopped work due to the alleged December 2012 injury, and the evidence does not indicate that she sought medical treatment for the left elbow until after her second injury on June 27, 2013. While appellant was treated by Dr. Chen in July 2013, he did not relate appellant's left elbow condition to the December 17, 2012 work injury. Finally, the Board notes that there is no medical diagnosis of a condition in connection with the December 17, 2012 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 to establish fact of injury.

On appeal, counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the attorney's argument is not substantiated.

Appellant may submit 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 December 17, 2012.

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 29, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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