



## **FACTUAL HISTORY**

On May 21, 2014 appellant, then a 38-year-old city carrier assistant, filed a traumatic injury claim alleging that she sprained her left ankle on March 10, 2014. She stated that she was walking on a sidewalk at 4:30 p.m. when she stepped on the side of the sidewalk and twisted her ankle. Appellant related that she experienced further pain when she stepped on uneven pavement.

A notification of personnel action indicated that appellant voluntarily resigned from the employing establishment effective March 29, 2014.

In a medical report and progress notes dated March 11 to 28, 2014, Thanh Phan, a physician's assistant, and Kenneth R. Johnson, a physical therapist, diagnosed a sprain/strain of the left ankle and sprain of the left foot in unspecified sites, addressed her restrictions, and released her to return to regular-duty work on March 28, 2014.

By letter dated June 9, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional factual and medical evidence. OWCP also requested that the employing establishment submit any medical evidence regarding treatment appellant received at its medical facility.

In a June 20, 2014 letter, appellant described the March 10, 2014 incident. She stated that, while carrying mail and packages on an uneven sidewalk on her new route, she twisted her left foot at the edge of the sidewalk. As she continued to deliver mail, appellant stepped on uneven pavement and her left foot went forward bending down hard due to the broken/cracked pavement. She was in pain and had to walk slowly but did not think her injury was serious. After appellant arrived at home she experienced difficulty walking from her vehicle to her house. The next day she informed a manager about her injury and then sought medical treatment for her swollen foot.

In progress notes dated March 14 to 26, 2014, Mr. Johnson and Mr. Phan listed findings on physical and x-ray examination, reiterated the diagnosis of sprain/strain of the left ankle and sprain of the left foot in unspecified sites and addressed appellant's treatment.

In a July 15, 2014 decision, OWCP denied appellant's claim, finding that the factual and medical evidence were insufficient to establish a left ankle injury on March 10, 2014 while in the performance of duty. It stated that she did not answer all the questions on the questionnaire. OWCP stated that the medical evidence either was not from a qualified physician under FECA or did not provide a history of injury as related by appellant and a rationalized opinion on the causal relationship between the claimed incident and a diagnosed medical condition.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> 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

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<sup>2</sup> *Id.*

States within the meaning of FECA; that the claim was filed within 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.<sup>3</sup> 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.<sup>4</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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 evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>5</sup>

An employee's statement 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.<sup>6</sup> Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden in 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. Circumstances such 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 doubt on an employee's statement in determining whether a *prima facie* case has been established.<sup>7</sup>

### ANALYSIS

The Board finds that appellant has established that on March 10, 2014 she twisted her ankle when she stepped on the edge of a sidewalk while delivering mail on her route. As noted, an employee's statement alleging that an incident 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.<sup>8</sup> Appellant's account of the March 10, 2014 incident was consistent throughout the case record. She filed a traumatic injury claim stating that she was walking on a sidewalk at 4:30 p.m. on March 10, 2014 when she twisted her left ankle as she stepped off the sidewalk. Appellant stated that she experienced further pain when she stepped on uneven pavement. She submitted a factual statement alleging that on March 10, 2014 she was carrying mail and packages on her route when she twisted her left foot at the edge of an uneven sidewalk. Appellant also stated that

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<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton, id.*

<sup>5</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>6</sup> *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>7</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>8</sup> *See cases cited, supra* note 6.

she experienced additional pain when she stepped on uneven pavement. While she did not immediately report her injury to a manager, this does not render the claim factually deficient. Appellant reputedly did not think her injury was serious and continued to deliver mail. After she arrived at home she experienced difficulty walking. On the day following her injury, appellant reported her injury to a manager and sought medical treatment on the same day. On March 11, 2014 she was treated by Mr. Phan, who diagnosed a sprain/strain of the left ankle in an unspecified site and sprain of the left foot. In view of the totality of the evidence, the Board finds that an employment incident occurred on March 10, 2014, as alleged. Thus, appellant has met the first component of fact of injury.

The remaining issue is whether the medical evidence establishes that appellant sustained an injury causally related to the established employment incident. In order to establish a causal relationship between the diagnosed condition and any resulting disability and the employment incident, appellant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such causal relationship.<sup>9</sup>

The medical report and progress notes from Mr. Phan, a physician's assistant, and Mr. Johnson, a physical therapist, have no probative medical value in establishing appellant's claim as neither a physician's assistant nor a physical therapist is a physician as defined under FECA.<sup>10</sup>

The Board finds that appellant has failed to submit any rationalized probative medical evidence to establish that she sustained left ankle and foot injuries causally related to the March 10, 2014 employment incident. Appellant did not meet her burden of proof.

On appeal, appellant contended that she timely submitted all the requested information in support of her claim. Her contention is moot as the Board has found that the March 10, 2014 incident occurred as alleged.

Appellant also contended on appeal that the medical evidence was sufficient to establish her claimed injury and resultant disability for work and resignation. As found above, the Board finds that she did not submit any rationalized probative medical evidence supporting a causal relationship between her diagnosed left ankle and foot conditions and the established employment incident.

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.

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<sup>9</sup> *T.H.*, 59 ECAB 388 (2008); *James Mack*, 43 ECAB 321 (1991).

<sup>10</sup> See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

**CONCLUSION**

The Board finds that, while appellant has established incident, she has failed to establish that her left ankle and foot injuries incurred on March 10, 2014 were causally related to the accepted work incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 15, 2014 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: December 15, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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