



## **FACTUAL HISTORY**

On February 7, 2013 appellant, then a 46-year-old city carrier, filed a traumatic injury claim alleging that on December 4, 2012 she sustained a right third metatarsal fracture at the site of a prior stress fracture. On December 4, 2012 she was walking on her route delivering mail and around 1:00 p.m. her foot started hurting. Appellant continued to work every day “hoping it would get better.” On January 16, 2013 she put on cleats because of ice and the pain became worse. Appellant made an appointment with her physician, on January 17, 2013, who diagnosed a stress fracture. Her physician excused her from work.

By letter dated February 22, 2013, the employing establishment controverted the claim. On February 27, 2013 it contended that appellant did not establish fact of injury. The employing establishment noted that she did not immediately report the injury to her manager at the time it occurred and there were no witnesses to the incident. Appellant was able to perform her normal job duties from December 4, 2012 through January 17, 2013. The employing establishment further noted that her physician had treated her based on subjective complaints of pain and failed to submit any medical documentation or test results. Appellant was advised to remain off work from January 18 through April 17, 2013 but the physician failed to provide medical evidence or rationale addressing why she was incapacitated. The employing establishment further contended that there was insufficient evidence on causal relationship.

Appellant submitted an attending physician’s report form dated January 18, 2013 from Dr. Joseph Yao, a Board-certified orthopedic surgeon, who diagnosed a probable right third metatarsal stress fracture, and indicated that it was caused or aggravated by walking while delivering mail. Dr. Yao listed the date of injury as December 4, 2012. In a January 17, 2013 work status report, he advised that appellant would need sick leave until April 17, 2013 due to the right third metatarsal stress fracture.

By letter dated March 19, 2013, OWCP advised appellant that her claim appeared to be a minor injury that resulted in minimal or no lost time from work. Therefore, payment of a limited amount of medical expenses was administratively approved, but the merits of the claim had not been adjudicated. It requested additional information in support of her claim, including evidence that she experienced the incident on December 4, 2012 and supportive medical evidence.

In response, appellant submitted a March 15, 2013 magnetic resonance imaging (MRI) scan of her right foot interpreted by Dr. James Dunne, a Board-certified surgeon. The right second cuneiform bone had changes that suggested avascular necrosis, but he could not completely exclude the possibility of it being due to a stress fracture. Dr. Dunne noted that the right third metatarsal bone had a slight marrow edema, which probably represented a stress fracture. Appellant also submitted a March 19, 2013 report from Dr. Yao, who diagnosed a closed fracture of the metatarsal bones, probably third metatarsal stress fracture. Dr. Yao noted that appellant stated that the date of the onset of pain was December 4, 2012 and had occurred while walking.

By decision dated April 22, 2013, OWCP denied appellant’s claim. It found that she did not establish that the December 4, 2012 incident occurred as alleged and that the medical evidence did not establish that the right metatarsal fracture was causally related to the incident.

## LEGAL PRECEDENT

An employee seeking 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 timely filed within the applicable time limitation period of FECA, that an injury was sustained 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>2</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>3</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>4</sup> The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<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 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>

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<sup>2</sup> *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

<sup>3</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>5</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

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

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

## ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she sustained an employment-related injury on December 4, 2012, as alleged. The evidence of record does not support that the incident occurred as claimed.<sup>8</sup> On her claim form, appellant indicated that she used cleats on January 16, 2013, which aggravated a prior stress fracture injury, and resulted in fractures to the top of her right foot. She did not list a specific date of her prior injury or submit any information about the prior injury. The record also does not contain any specific description of trauma on December 4, 2012. There are no witnesses that can attest to the injury. Appellant continued to work from December 4, 2012 through January 17, 2013. During this time, she did not report the December 4, 2012 incident to her supervisor nor is there any record that she sought medical attention until January 18, 2013. The Board finds that the evidence of record casts doubt on whether the incident occurred as alleged. An employee has not met his or her burden of proof when there are such inconsistencies in the evidence to question the validity of the claim.<sup>9</sup> Therefore, appellant has not established an employment incident occurred as alleged.<sup>10</sup>

The Board notes that appellant submitted new evidence after the issuance of the April 22, 2013 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.<sup>11</sup> 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 that she sustained an injury in the performance of duty on December 4, 2012, as alleged.<sup>12</sup>

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<sup>8</sup> *Paul Foster*, 56 ECAB 208 (2004).

<sup>9</sup> *G.D.*, Docket No. 13-1358 (issued November 14, 2013).

<sup>10</sup> As appellant has not established the factual component of her claim, the medical evidence need not be considered.

<sup>11</sup> *See* 20 C.F.R. § 501.2(c)(1).

<sup>12</sup> Appellant described employment factors occurring over more than one workday or shift. She may consider filing an occupational disease claim. *See* 20 C.F.R. § 10.5(q).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 22, 2013 is affirmed.

Issued: July 28, 2014  
Washington, DC

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

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

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