United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 14-435**
	)	**Issued: July 8, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Doral, FL, Employer	)	

Appearances:
Lenin V. Perez, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 18, 2013 appellant, through her representative, filed a timely appeal from the August 6, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[1] (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 February 6, 2012.

FACTUAL HISTORY

On February 7, 2012 appellant, a 46-year-old city carrier, filed a traumatic injury claim alleging that she was pushing a tub into her vehicle the previous day when her legs slipped. She

[1] 5 U.S.C. § 8101 *et seq.*

stated that "On Feb. 6 2012 around 8 am while loading my truck I slipped on the floor of my truck, the floor was slippery because of the rain." Appellant explained that she did not fill out an injury report at that time because she thought the pain would go away. The following day, however, her pain increased, so she filed a claim and sought medical attention.

At the time of the alleged incident, a coworker noticed that appellant was complaining of pain in her low back, by her waist. She stated that appellant pointed out that the floor by the truck, where one stands to load it, was wet and slippery. The coworker stated, "But I really do n[o]t know what happen, (*sic*) or how the floor was wet."

Appellant's supervisor initially certified that her knowledge of the facts matched appellant's statement; but she wrote on February 7, 2012 that she investigated the accident site when appellant notified her of the incident on February 6, 2012. Although appellant had reported that the floor had oil on it, which made her slip, there was no oil. The floor was wet but not slippery. The supervisor asked another carrier to verify if the floor was slippery and he responded that it was wet. She also noted that appellant's uniform was not dirty or wet due to the alleged fall.

When appellant reported on February 7, 2012 that the incident had injured her, the supervisor asked appellant to demonstrate exactly what happened. "[Appellant] went to her truck and loaded a tub into the long life vehicle (LLV). She pushed the tub (with her personal items) to the front of the LLV. When doing so [appellant's] legs/feet slipped on the wet floor, making her fall into the LLV. She [stated] that her abdomen and back hurt. [Appellant] stated that the floor was wet and was the reason she had fallen. I explained to her that cement is not slippery when wet." The supervisor found that the accident was questionable. There was no witness. The floor was not slippery. Appellant was "an accident repeater."[2]

In a decision dated March 26, 2012, OWCP denied appellant's injury claim. It found that the evidence was not sufficient to establish that the incident occurred as alleged. Although appellant reported the incident on February 6, 2012, she did not seek immediate medical treatment. Also, an investigation of the area did not support that the floor was slippery. The supervisor's review of appellant's uniform did not show it to be dirty or wet due to an alleged fall.

During a telephonic hearing before an OWCP hearing representative, appellant explained that her vehicle was in the loading zone of the parking lot. The parking lot was concrete but very slippery. "And when I pushed a bucket that I have with my stuff into the truck, I slipped and fell on top of it on the floor of the truck." As appellant's representative explained in further detail,[3] appellant was loading up her vehicle from the back. While putting things into her vehicle, her feet slipped out away from the vehicle and the front of her body fell towards the vehicle. Appellant tried to protect her face so she would not slam her face on the floor of the truck. She confirmed that she never fell on the ground.

[2] The record indicates that appellant filed traumatic injury claims in 2000 and 2008, as well as an occupational disease claim in 2011.

[3] Appellant had some difficulty expressing herself in English.

In an August 23, 2012 decision, the hearing representative found that appellant established that the incident occurred as alleged. The hearing representative found that her account of falling into her postal vehicle was consistent with her claim form and narrative statement. Statements that the concrete was not slippery and the fact that appellant's pants were not dirty were insufficient to cast serious doubt upon the validity of her claim. The hearing representative found, however, that the medical evidence did not establish that she sustained a medical condition causally related to the February 6, 2012 incident.

Appellant requested reconsideration and submitted a December 4, 2012 statement of what happened:

> "On February 6, 2012 around 8:15 am, I was loading my truck while it was raining; suddenly I slipped and fell inside my truck because the floor was very slippery. After my falling, Oscar Calleja another letter carrier, told me that there was also residue from spilled oil that was mixed with the water from the rain. I fell on my back with my legs and head up as I was trying to avoid hitting my face." Appellant stated that she felt a lot of pain all over her body, especially her abdomen, back, neck, shoulder, arms and lower legs."

In a decision dated August 6, 2013, OWCP reviewed the merits of appellant's claim and found that she did not meet her burden of proof to establish that the incident occurred as alleged. It noted that her most recent statement created too many inconsistencies in the history of how the incident occurred and cast serious doubt on the validity of her claim. Appellant initially admitted that she fell forward into her postal vehicle and she reported to her physician that she fell facedown. Her most recent statement, however, contradicted that history. As the evidence was insufficient to establish the factual component of appellant's claim, OWCP did not review whether newly submitted medical evidence established the element of causal relationship.

On appeal, appellant notes that her supervisor was not present when the incident occurred and did not see the area at that time. It was raining on the day of the incident. Appellant explains that her uniform and hands were not dirty because she slipped and fell into her vehicle and not to the ground.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[4] An employee seeking benefits under FECA 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.[5]

[4] 5 U.S.C. § 8102(a).

[5] *John J. Carlone*, 41 ECAB 354 (1989).

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.[6]

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.[7]

ANALYSIS

In the August 23, 2012 decision, the hearing representative found that appellant established that the incident occurred as alleged. Appellant's contemporaneous account of events was that she was pushing a tub into her vehicle on February 6, 2012 when both of her legs slipped.[8] There was no eyewitness, but this raises no doubt about the validity of her claim. That appellant did not immediately go to the emergency room does not suggest that the incident did not occur or that it did not cause injury. She thought the pain would go away and she notified her supervisor of what happened. When the pain increased the following day, appellant obtain authorization for medical treatment, promptly obtained medical treatment that very day and filed her claim for compensation, all of which is consistent with an injury having occurred.

As the hearing representative noted with respect to appellant's uniform not being dirty or wet, appellant never alleged that she fell onto the wet cement. Appellant explained that she fell forward into her postal vehicle.

Appellant's supervisor observed that "cement is not slippery when wet." One coworker confirmed that the ground was wet. Another coworker, whom the supervisor asked to verify if the ground was slippery, apparently confirmed that it wet. Although the supervisor's suggestion was that this coworker denied the ground was slippery, she did not explicitly state this. Appellant asserted that this coworker confirmed the presence of oil residue. OWCP received no statement from the coworker prior to issuing its final decision on appellant's claim.

Regardless of the precise reason she fell, appellant's account of falling forward into her vehicle is of great probative value and the hearing representative's finding that she met her burden to establish the factual component of her claim is well supported by the weight of the evidence.

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[6] *Caroline Thomas*, 51 ECAB 451 (2000).

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

[8] In her narrative statement, appellant stated that she slipped on the floor of her truck, but other evidence makes clear that she was standing outside the back of her truck and slipped or fell "onto" the floor of the vehicle.

After a claimant has established that an employment incident occurred as alleged, the issue becomes whether the incident caused an injury or diagnosed medical condition, which is a medical issue.[9]

Accordingly, the Board will set aside OWCP's August 6, 2013 decision, which denied appellant's injury claim on the grounds that she failed to establish an incident. The Board will remand the case for consideration of the medical opinion evidence and a finding on whether the February 6, 2012 work incident caused an injury or diagnosed medical condition. After such further development as may become necessary, OWCP shall issue a *de novo* decision on appellant's injury claim.

CONCLUSION

The Board finds that appellant established that she experienced the February 6, 2012 incident at the time, place and in the manner alleged. The case is not in posture for determination of whether this incident caused an injury. Further action is warranted.

ORDER

IT IS HEREBY ORDERED THAT the August 6, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action.

Issued: July 8, 2014
Washington, DC

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

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

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

[9] *See generally Elaine Pendleton*, 40 ECAB 1143 (1989).