

FACTUAL HISTORY

On October 4, 2012 appellant, then a 67-year-old information technology specialist, filed a traumatic injury claim alleging that on September 20, 2012 she sustained a thoracic fracture when she fell while walking into her building. In a witness statement on the form, Sean Conway, a coworker, stated that he saw appellant appear to trip over a brick on the walkway between the covered garage and the street.

In a November 15, 2012 report, Dr. Joseph J. Boucree, a treating Board-certified orthopedic surgeon, provided physical findings. He diagnosed a T8 compression fracture and thoracic spondylosis with degenerative disc disease. Dr. Boucree reported that the injury occurred at work on September 20, 2012 when appellant “fell and tumbled onto the ground.” On December 6, 2012 OWCP received an October 8, 2012 x-ray which revealed a T8 fracture.

By correspondence dated January 9, 2013, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised as to the medical and factual evidence required to support her claim and given 30 days to provide such information.

Appellant submitted a January 23, 2013 statement detailing how the incident occurred. She was walking between buildings three and four when she fell onto concrete brick pavement near the parking area between 7:45 a.m. and 8:00 a.m. Appellant was walking with Mr. Conway, a coworker, on the way to enter the building where they work. The fall was reported by the people who responded to her and administered first aid. Appellant went to urgent care on September 21, 2012 and the doctor ordered x-rays. On September 23, 2012 she was notified by urgent care that she had a T8 compression fracture. After the fall, appellant was able to get up and walk even though her left hip was bruised and she was in pain.

By decision dated February 19, 2013, OWCP denied appellant’s claim on the grounds that the incident did not occur as alleged.

By letter dated March 7, 2013, appellant’s counsel requested a telephonic hearing, which was held before an OWCP hearing representative on June 18, 2013. At the hearing, appellant testified that she did not know why she fell. She was walking on cobble bricks at a decline when she stumbled and fell.

By decision dated September 10, 2013, an OWCP hearing representative affirmed the denial of appellant’s claim. She accepted the incident but found the medical evidence insufficient to establish the claim as it failed to provide a history identifying the mechanism of injury or how the diagnosed condition was causally related to the alleged September 20, 2012 incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his claim, including the fact that the individual is an employee of the United States

² 5 U.S.C. § 8101 *et seq.*

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

ANALYSIS

Appellant alleged that on September 20, 2012 she sustained a thoracic fracture when she fell over while walking. She notified the employing establishment of the incident and provided a witness statement from Mr. Conway, a coworker. Appellant received first aid care at the time of the injury, sought medical treatment at urgent care on September 22, 2012 and followed up with a private physician, Dr. Boucree, on November 15, 2012.

OWCP found the factual evidence sufficient to establish the occurrence of the September 20, 2012 employment incident.

The issue is whether the medical evidence establishes that appellant sustained a back injury causally related to the employment incident. The question of whether an employment incident caused an injury is generally established by medical evidence.⁸

On November 15, 2012 Dr. Boucree reported that he first saw appellant for a September 20, 2012 on-the-job fall that day. He noted that she stumbled and fell on the ground and felt immediate pain. Dr. Boucree's opinion is generally supportive and unequivocal and based on an accurate history of injury. His opinion lacks only an explanation of why the September 20, 2012 incident resulted in the diagnosed condition. While the medical evidence is insufficiently rationalized to meet appellant's burden of proof, it raises an unrefuted inference of

³ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁴ S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ B.F., Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3.

⁶ D.B., 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁷ C.B., Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3.

⁸ See *John W. Montoya*, 54 ECAB 306 (2003).

causal relationship sufficient to require further development by OWCP.⁹ Accordingly, the Board will remand the case to OWCP. On remand, OWCP should further develop the medical record to determine whether appellant sustained an injury causally related to the September 20, 2012 work incident. Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for a decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 10, 2013 is set aside and the case remanded for further proceedings consistent with the above opinion.

Issued: May 13, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁹ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).