

FACTUAL HISTORY

On November 27, 2013 appellant, then a 46-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that same date, she sustained an injury to her arm and knee when she was hit by a moped on her left arm and left side of her body while she was crossing the street during her mail delivery route. She stated that the driver of the moped fled without providing his information, but the paint from his moped marked her pants at her right knee. Appellant notified her supervisor, stopped work and received medical care on the date of the incident.³

The employing establishment issued appellant a properly completed Form CA-16, authorization for examination, dated November 27, 2013, which indicated that she was authorized to visit First Medical in Glendale, NY for treatment. The injury was noted as handle bars of moped hit shoulder causing shoulder and arm to hurt. On the form, it checked the box indicating that there was doubt as to whether appellant's condition was caused by an injury in the performance of duty or otherwise related to the employment.

In support of her claim, appellant submitted a November 27, 2013 Attending Physician's Report (Form CA-20) and Duty Status Report (Form CA-17), which noted that she sustained an injury when a moped hit her while delivering mail. The reports did not contain a legible signature.

By letter dated November 29, 2013, the employing establishment controverted the claim. Appellant's manager, Rosemarie Martin, reported that appellant left the scene of the accident and failed to notify management in a timely manner so that a thorough investigation could be conducted. Ms. Martin stated that appellant returned to the station following the alleged accident and stated that the small white mark on her postal uniform at the right knee was from the paint of the moped that hit her. She stated that appellant complained that her arm and shoulder hurt because the handle bars hit her in the shoulder, but she did not complain of any injury to the knee.

By letter dated December 18, 2013, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was asked to respond to the questions provided in the letter within 30 days.

Appellant did not respond to OWCP's questionnaire. A December 10, 2013 Form CA-17 was submitted.

By decision dated January 21, 2014, OWCP denied appellant's claim finding that the evidence did not establish that the incident occurred as alleged. It further found that the medical evidence failed to establish a firm medical diagnosis, noting that the evidence submitted contained a diagnosis of "pain" which is a symptom and not a diagnosed medical condition.

³ The Board notes that appellant has filed six other traumatic injury claims from May 10, 2005 to June 1, 2011. The record reveals no other information pertaining to appellant's other traumatic injury claims.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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 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

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 which is alleged to have occurred.⁶ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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.⁷ Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation, is causally related to the accepted injury.⁸

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 his or her subsequent course of action. In determining whether a 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 substantial doubt on the employee’s statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁹

⁴ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁵ *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Elaine Pendleton*, *see supra* note 4 at 1143.

⁷ *See also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See generally* *John J. Carlone*, 41 ECAB 354 (1989); *see* *Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant’s burden of proof in an occupational disease claim.

⁸ *Supra* note 5.

⁹ *Betty J. Smith*, 54 ECAB 174 (2002).

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.¹⁰ The opinion of the physician must be based on 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹¹

ANALYSIS

The Board finds that appellant failed to establish an injury in the performance of duty on November 27, 2013.

Appellant must establish all of the elements of her claim in order to prevail. Before the medical evidence submitted can be considered, she must prove her employment, the time, place and manner of injury, a resulting personal injury and that her injury arose in the performance of duty.¹²

On her November 27, 2013 CA-1 form, appellant alleged that she sustained a knee and arm injury when she was struck by a moped when crossing the street to deliver mail on that same date. She stated that paint from the moped stained her pants by her knee. By letter dated November 29, 2013, Ms. Martin, appellant's manager, controverted the claim stating that appellant left the scene of the alleged accident and failed to provide timely notification so that a thorough investigation could be conducted. She stated that appellant returned to the station following the accident and showed a small white mark on her postal uniform at the right knee, which appellant alleged was from the paint of the moped that hit her. Ms. Martin stated that appellant complained that her arm and shoulder hurt because the handle bars hit her in the shoulder and did not complain of any injury to the knee. The November 27, 2013 CA-20 form and CA-17 form submitted also noted that appellant was hit by a moped on that date.

Appellant has not provided the sufficient detail needed to establish that the incident occurred in the manner alleged.¹³ She failed to present evidence regarding the specific

¹⁰ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

¹¹ *James Mack*, 43 ECAB 321 (1991).

¹² To establish causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment alleged to have caused her condition and, taking these factors into consideration, as well as findings upon examination and her medical history, explain how these employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his opinion. See *Robert Broome*, 55 ECAB 339 (2004).

¹³ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

mechanism of injury, as required in a claim for traumatic injury.¹⁴ Appellant's CA-1 form only generally stated that a moped ran into her left arm and left side. The properly executed CA-16 form noted that the handle bars of the moped hit her shoulder. It is unclear where the moped hit appellant as she failed to adequately describe the circumstances of her injury or the exact and immediate consequences of the injury. Appellant did not identify the third party who allegedly hit her and left the scene of the accident before a thorough investigation could be conducted by the employing establishment. The employing establishment has controverted the claim. The Board finds that appellant's vague recitation of the facts does not support her allegation that a specific event occurred which caused a work-related injury.¹⁵

In its December 18, 2013 development letter, OWCP informed appellant that the information initially provided was insufficient to support her claim. Appellant was provided a series of questions regarding the factual circumstances of the alleged incident and advised to provide details which would clarify the nature of her claim. She provided no response, however, to OWCP's request for information.

The contemporaneous medical evidence of record is also insufficient to establish appellant's claim. The CA-17 and CA-20 forms submitted only generally noted a moped ran into her while delivering mail. As the forms failed to provide a detailed history of injury describing the time, place and manner in which the alleged injury occurred, the medical evidence is insufficient to establish that the incident occurred as alleged.

Appellant has not met her burden of proof to establish that she experienced the employment incident at the time, place and in the manner alleged or that it caused an injury.¹⁶ As she has not met her burden of proof to establish the fact of injury, it is not necessary to discuss the probative value of the medical reports.¹⁷

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an injury in the performance of duty on November 27, 2013.

¹⁴ *Paul Foster*, 56 ECAB 1943 (2004) (the Board found that appellant had failed to establish the fact of injury where his allegations were vague and undocumented and did not relate with specificity the cause or immediate consequences of the claimed injury).

¹⁵ *M.B.*, Docket No. 11-1785 (issued February 15, 2012).

¹⁶ *T.C.*, Docket No. 12-579 (issued July 2, 2012).

¹⁷ *Tracey P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 24, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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