

On appeal appellant contends that her supervisor delayed sending a report of her injury. She stated that she should have filed a claim for recurrence of her August 20, 2013 injury (Form CA-2a) instead of a claim for traumatic injury (Form CA-1).

FACTUAL HISTORY

On May 8, 2014 appellant, then a 52-year-old postal support employee mail processing clerk, filed a claim for traumatic injury (Form CA-1) alleging that on March 28, 2014 she sustained an injury when she picked up a tub of mail at work. Appellant's supervisor, controverted appellant's claim, stating that appellant stated that she had recently missed work on March 15, 2014 because she had been attacked by two men on a bus while on her way to work. The supervisor did not receive notice of appellant's March 28, 2014 injury until May 20, 2014.

Appellant disagreed with the history of injury provided by her supervisor and responded that she only provided medical documentation regarding her March 28, 2014 injury. She alleged that she had low back pain and aggravated her left foot fracture when she picked up a tub of mail at work on that day.

In a May 8, 2014 letter, appellant's supervisor stated that appellant did not report an accident. The supervisor did not believe that appellant sustained a work-related injury on March 28, 2014 as she only reported and provided documentation to the supervisor regarding the March 15, 2014 assault. She noted that appellant also reported that she was stiff and sore due to the March 15, 2014 incident.

In return to work instructions dated April 1, 2014, Dr. Roy C. Elrod, a family practitioner, discharged appellant from care on that day. He advised that she could return to work with no restrictions on April 4, 2014.

By letter dated June 10, 2014, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional factual and medical evidence. It requested that the employing establishment submit medical evidence, if appellant had been treated at its medical facility.

Discharge instructions from the Detroit Receiving Hospital Emergency Room dated April 1, 2014 indicated that appellant was evaluated by Dr. Elrod for chronic back and foot pain. The instructions addressed her treatment plan and medications.

In a leave of absence notice dated April 15, 2014, Dr. Sayeed A. Khan, an internist, advised that appellant was unable to return to work until further evaluation. In a transportation disability certificate dated April 22, 2014, he indicated that appellant has been involved in a motor vehicle accident on April 10, 2014. Dr. Kahn diagnosed acute cervicgia with left upper extremity radiculopathy and associated severe myofascial spasms, acute low back pain with left lower extremity radiculopathy, sciatica, and possible herniated nucleus pulposus. He stated that appellant required medical transport service and restricted her from certain activities from April 15 to May 15, 2014. In a June 2, 2014 Family Medical Leave Act (FMLA) certification of healthcare provider form, Dr. Khan reiterated his prior diagnoses and also diagnosed sacroiliitis pain secondary to trauma on the left side, severe myofascial spasms, lumbago, lumbar

strain/sprain, and cervicogenic headaches. He related that appellant's conditions commenced on April 10, 2014 and prevented her from performing certain postal support employee clerk job functions. Dr. Khan noted that it was medically necessary for her to miss work if she had headaches and pain in her neck and arms.

On May 16, 2014 Dr. Joyce Patouhas, a podiatrist, provided a history of a large cart rolling over appellant's left foot at work. She noted her complaints of sharp, throbbing, shooting, and tingling pain around her left foot. Dr. Patouhas provided appellant's medical history and examination findings. She diagnosed peripheral autonomic neuropathy, pain, difficulty walking, and a crush injury of her foot.

In a report from St. John Hospital and Medical Center Emergency Room which contained an illegible date, Dr. Ken Earl Kuper, III, Board-certified in emergency medicine, told appellant not to return to work until she was released by a family or company physician. In discharge instructions dated April 10, 2014, he provided no specific diagnosis. Dr. Kuper addressed appellant's follow-up care and medications.

In a July 21, 2014 decision, OWCP denied appellant's claim, finding that the factual and medical evidence was insufficient to establish that she sustained an injury on March 28, 2014 while in the performance of duty. It noted that she had failed to establish her claim as there were inconsistencies in the evidence regarding her alleged injury. OWCP stated that appellant also had failed to submit any medical evidence that established a diagnosed medical condition causally related to the work injury or event.

On August 7, 2014 appellant requested a review of the written record by an OWCP hearing representative. In a July 22, 2014 letter, she described her back injury as occurring at work on March 28, 2014 when she lifted a tub, and swiped, expedited, and sorted mail. Appellant noted that, after trying to lift tubs for a third time, her back went out. She stated that she verbally reported her injury to several supervisors on duty that night, but that she could not file a written report until she returned to work on April 4, 2014. Appellant alleged that her supervisor refused to file the report and did not give her any documents until May 20, 2014. She claimed that her March 28, 2014 injury was caused by overwork on a cracked foot and repeatedly being misused as an employee. Appellant stated that she had not reported an assault.

In an April 24, 2014 report, appellant's physical therapist addressed the treatment of appellant's back and lower extremities.

In a June 5, 2014 FMLA certification of healthcare provider form, Dr. Patouhas stated that appellant's peripheral autonomic neuropathy, left foot pain, difficulty with walking, and a crush foot injury commenced on August 20, 2013. Appellant was incapacitated from March 28, 2015 to an unknown date due to her conditions. Dr. Patouhas related that appellant could not return to work until her back and left foot pain were at a manageable level. On August 12, 2014 she reported that appellant's primary care physician and neurologist had not released her to return to work.

In a July 17, 2014 physician activity status report, Dr. Peter E. Biglin, a Board-certified physiatrist, diagnosed lumbar sprain and released appellant to return to regular work on that day.

In an August 13, 2014 therapy request form, Dr. Khan ordered continued physical therapy to treat appellant's lumbago, lumbar disc displacement, and lumbar radiculopathy.

On October 16, 2014 Dr. Vaqar K. Siddiqui, a Board-certified neurologist, advised that appellant was totally disabled from work through November 17, 2014. In a November 13, 2014 report, he noted that she was totally disabled from work through November 24, 2014.

In a January 6, 2015 letter, appellant stated that she should have filed a Form CA-2a alleging a recurrence of her August 20, 2013 injury rather than a Form CA-1.²

In a February 10, 2015 decision, an OWCP hearing representative affirmed the July 21, 2014 decision. She found that the factual and medical evidence was insufficient to establish the claim. The hearing representative found that appellant had not established a factual basis for her claim and that the medical evidence failed to establish a causal relationship between a diagnosed medical condition and an alleged incident.

By letter dated March 11, 2015, appellant requested reconsideration. She referenced her August 20, 2013 left foot injury and contended that on March 28, 2014 she aggravated this injury and also sustained a back injury at work.

In both an undated report and a February 4, 2015 report, Dr. Louis N. Radden, an orthopedic surgeon, noted April 10, 2014 as the date of accident. He diagnosed appellant as having displaced "cervical intervertebral disc" and other syndromes affecting the cervical spine. Dr. Radden advised that she was disabled for work from February 4 to March 18, 2015. He opined that appellant was disabled from performing housework, driving, and attendant care during the same period.

In a May 7, 2015 decision, OWCP denied further merit review of appellant's claim. It found that the evidence submitted was irrelevant or immaterial.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ 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 filed within applicable time limitations; 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

² The Board notes that appellant appealed OWCP's decision denying further merit review of its denial of her traumatic injury claim under File No. xxxxxx469 which alleged that she sustained a left foot injury at work on August 20, 2013. Appellant's appeal has been assigned Docket No. 15-1383.

³ *Id.*

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

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.⁶ There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that 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.⁷

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.⁸ 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 of proof to establish 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.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has failed to meet her burden of proof to establish a traumatic injury claim, as alleged.

Appellant filed her claim on May 8, 2014. She alleged that she sustained a traumatic injury to her back and left foot on March 28, 2014 while lifting a tub of mail in the performance of duty. Appellant's statement that she sustained a traumatic injury on March 28, 2014, although entitled to great weight, is contradicted by her supervisor's statements and the medical evidence.

Appellant asserted that she verbally reported her injuries to several supervisors on March 28, 2014, but that she could not file a written report until she returned to work on April 4, 2014. She further asserted that her supervisor refused to file an injury report and delayed giving her the appropriate documents until May 20, 2014. However, appellant's supervisor stated that she did not receive notice of appellant's injury until May 20, 2014. She noted that she had received documentation from appellant on March 18, 2014 about missing

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *id.*

⁶ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁷ *T.H.*, 59 ECAB 388 (2008).

⁸ *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

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

work that day as a result of being assaulted by two men on a bus while on her way to work on March 15, 2014. The supervisor stated that appellant told her that she was stiff and sore due to this incident. While appellant denied her supervisor's allegation that she had reported a March 15, 2014 assault, she failed to establish that she had timely reported the March 28, 2014 incident to her supervisor. The Board finds that the supervisor's statements cast serious doubt on whether the March 28, 2014 incident occurred as alleged.

The record contains medical reports which indicated that appellant had received medical treatment contemporaneous to the claimed incident, but none of the reports provide March 28, 2014 as the date of injury. Moreover, the medical evidence of record does not contain a history of injury consistent with appellant's description of the alleged work incident. On May 16 and June 5, 2014 Dr. Patouhas noted that appellant injured her left foot on August 20, 2013 when a large cart rolled over it. Dr. Khan's reports addressed appellant's cervical, left upper and lower extremities, and back conditions, and work capacity, however, he stated that her conditions commenced on April 10, 2014, the day she was involved in a motor vehicle accident.

The Board finds that appellant has not provided evidence sufficient to establish that the March 28, 2014 incident occurred at work, as alleged.¹⁰ Appellant has not met her burden of proof to establish any employment-related conditions.¹¹ As such, it is unnecessary to address the medical evidence regarding causal relationship.¹²

On appeal appellant contends that her supervisor delayed sending a report of her injury and that she should have filed a Form CA-2a alleging a recurrence of her August 20, 2013 injury instead of a Form CA-1. As discussed, she did not submit sufficient evidence to establish that the March 28, 2014 incident occurred as alleged. Accordingly, appellant failed to establish fact of injury.

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.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128 of FECA,¹³ OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁴ To be entitled to a merit review of an OWCP decision denying or

¹⁰ *T.M.*, Docket No. 13-1997 (issued February 11, 2014).

¹¹ *See S.P.*, 59 ECAB 184 (2007); *Michael A. Danowski*, 34 ECAB 706 (1983).

¹² *Alvin V. Gadd*, *supra* note 6.

¹³ *Supra* note 1. Under section 8128 of FECA, the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

¹⁴ 20 C.F.R. § 10.606(b)(3).

terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹⁵ Section 10.608(b) of the implementing regulations state that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.¹⁶

ANALYSIS -- ISSUE 2

In support of her March 11, 2015 request for reconsideration, appellant neither demonstrated that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP. She submitted Dr. Radden's February 4, 2015 report which provided a date of injury as April 10, 2014, found that appellant had displaced "cervical intervertebral disc" and other syndromes affecting the cervical spine, and opined that she was totally disabled from work and personal activities from February 4 to March 18, 2015. This evidence, while new, is irrelevant to the issue of whether fact of injury has been established. Dr. Radden did not attribute appellant's diagnosed conditions and disability to a March 28, 2014 incident which she claimed had caused or contributed to her back and left foot conditions. The submission of evidence or argument that does not address the particular issue involved does not constitute a basis for reopening a case.¹⁷

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish back and left foot injuries on March 28, 2014 while in the performance of duty. The Board further finds that OWCP properly denied her request for further merit review of her claim pursuant to 5 U.S.C. § 8128(a).

¹⁵ *Id.* at § 10.607(a).

¹⁶ *Id.* at § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

¹⁷ *R.M.*, 59 ECAB 690 (2008); *Betty A. Butler*, 56 ECAB 545 (2005).

ORDER

IT IS HEREBY ORDERED THAT the May 7 and February 10, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 22, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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