

**United States Department of Labor
Employees' Compensation Appeals Board**

C.C., Appellant)

and)

DEPARTMENT OF STATE, FOREIGN)
SERVICES, Washington, DC, Employer)

**Docket No. 15-1866
Issued: December 11, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 11, 2015 appellant filed a timely appeal from an April 15, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a tooth injury in the performance of duty on November 19, 2009.

FACTUAL HISTORY

On December 16, 2009 appellant, then a 52-year-old administrative assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 19, 2009 she sustained a cracked

¹ 5 U.S.C. § 8101 *et seq.*

front left tooth when “flipped up lid on modular furniture rolled down and struck front tooth.” She notified her supervisor of this incident on December 16, 2009.

The claim remained in dormant status until appellant submitted a dental bill dated October 3, 2011 from Dr. John A. Salazar, a doctor of dental medicine. The bill indicated treatment on three different teeth.

By letter dated March 12, 2015, OWCP notified appellant that her claim was initially administratively handled to allow medical payments, as it appeared to involve a minor injury resulting in minimal or no lost time from work. The merits of the claim had not been formally considered, but her claim was reopened for consideration of the merits because the medical bills exceeded \$1,500.00. OWCP informed appellant that the evidence of record was insufficient to support her claim and noted that the October 3, 2011 dental bill indicated that she had treatment on more than just her front tooth. It requested that she submit a response to a questionnaire in order to substantiate the factual basis of her claim and a medical report from her attending dentist which included a diagnosis, history of the injury, and opinion on causal relationship supported by medical rationale. The questionnaire requested that appellant describe the immediate effects of the injury and what she did thereafter, a description of her condition between the date of injury and the date she first received medical attention, the nature and frequency of any home treatment, and why she waited until October 3, 2011 to seek dental treatment for an injury that occurred on November 19, 2009. Appellant was afforded 30 days to provide the requested information. No evidence was received.

By decision dated April 15, 2015, OWCP denied appellant’s claim finding that the evidence of record failed to establish that the November 19, 2009 employment incident occurred at the time, place, and in the manner alleged. It noted that she failed to establish fact of injury because she did not respond to the questionnaire that was sent with the March 12, 2015 development letter. OWCP further found that the evidence of record failed to establish a firm medical diagnosis which could be reasonably attributed to the alleged November 19, 2009 employment incident, stating that it was unclear which tooth was injured as appellant submitted a dental bill indicating treatment on more than one tooth.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of 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.² 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.³

² Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

³ Michael E. Smith, 50 ECAB 313 (1999).

OWCP defines a traumatic injury as, “[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected.”⁴ 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.⁵ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁶

ANALYSIS

The Board finds that appellant failed to establish that she sustained a traumatic injury in the performance of duty on November 19, 2009, as alleged.

Appellant must establish all of the elements of her claim in order to prevail. She must prove the time, place, and manner of the alleged incident, and a resulting personal injury.⁷ On her Form CA-1, appellant explained that on November 19, 2009 she sustained a cracked front left tooth when a lid on modular furniture rolled down and struck her front tooth. The Board notes that appellant’s description of the traumatic incident is vague and fails to provide any detail to determine, when, where, and how she sustained her injury. Appellant’s description of the injury is unclear and confusing with no reference to the specific tooth injured other than generally noting “left front tooth.”

Furthermore, by letter dated March 12, 2015, OWCP requested that appellant describe the factual circumstances of her injury and provided her with a questionnaire for completion. It also requested a rationalized medical report from her treating dentist. Appellant did not respond. The only explanation provided pertaining to the November 19, 2009 traumatic incident was the generalized and vague statement noted in her Form CA-1. By failing to describe the employment incident and circumstances surrounding her alleged injury, appellant has not established that the traumatic injury occurred as alleged.⁸

Dr. Salazar’s dental bill dated October 3, 2011 also fails to establish appellant’s traumatic injury claim. It is unclear why appellant waited until October 3, 2011 to submit for dental treatment when the traumatic injury was alleged to have happened on November 19, 2009. The dental bill also documents treatment for three different teeth whereas appellant has alleged injury to one tooth only. The Board also notes that this bill did not provide an accompanying statement

⁴ 20 C.F.R. § 10.5(ee).

⁵ *Elaine Pendleton*, *supra* note 2.

⁶ *A.G.*, Docket No. 12-659 (issued August 22, 2012); *D.D.*, 57 ECAB 734, 738 (2006).

⁷ *See generally John J. Carlone*, 41 ECAB 354 (1989).

⁸ *P.T.*, Docket No. 14-598 (issued August 5, 2014).

explaining with supporting rationale how any tooth was injured by the alleged employment incident.⁹

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 that she sustained an injury in the performance of duty on November 19, 2009.

ORDER

IT IS HEREBY ORDERED THAT the April 15, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 11, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁹ See *T.W.*, Docket No. 15-1135 (issued August 26, 2015).