

a.m. on Tuesday, July 14, 2015.² She indicated that the injury occurred on the second floor of the Main Post Office Building in Denver, CO. Regarding the cause of the claimed injury, appellant noted, “Stubbed right toe on curb.” She stopped work on July 14, 2015 and later returned to work for eight hours per day.

Appellant submitted several reports, dated beginning July 14, 2015, in which an attending physician diagnosed right foot sprain and sprain of the right fifth toe and recommended that she return to work with restrictions. A Duty Status Report (Form CA-17) dated July 14, 2015, noted “toe contusion” as the diagnosis.³

In an August 4, 2015 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim.⁴ It indicated that the documentation received to date had been reviewed, and was found to be insufficient as it did not establish that she actually experienced the incident or employment factor alleged to have caused injury. Moreover, a physician’s opinion as to how the incident resulted in the condition diagnosed had not been provided. OWCP requested that appellant complete and submit an enclosed questionnaire within 30 days which directed her to provide additional information, including the following:

“1. State where you were and what you were doing at the time your injury occurred. Provide a detailed description as to how your injury occurred. (For example, if you fell, state how far you fell, how you landed, etc. If lifting was the cause of the injury, describe the object handled, its weight, what you did with it, etc.)

“2. State the immediate effects of the injury and what you did immediately thereafter.

“3. Did you have any similar disability or symptoms before the injury? If so, describe the prior condition. Please send records of all prior treatment.”

Appellant submitted August 5 and 21, 2015 reports in which her attending physician assistant again diagnosed right foot sprain and sprain of the right fifth toe and recommended that she return to modified work. These reports also list an injury date of July 14, 2015.

In an August 21, 2015 Duty Status Report, an attending physician listed the date of injury as July 14, 2015 and the mechanism of injury as “Stubbed right toe.” The physician diagnosed metatarsophalangeal joint pain due to the reported July 14, 2015 injury and recommended work restrictions for appellant.

In a record of a September 10, 2015 telephone conversation, an OWCP employee noted that she spoke to appellant and advised her that OWCP had not received her response to the

² On the same form, appellant’s immediate supervisor indicated that appellant’s regular work hours were 8:30 a.m. to 4:00 p.m., but the supervisor did not specify the particular days of the week she usually worked. The supervisor checked a box marked “yes” indicating that the claimed injury occurred in the performance of duty.

³ The physician’s signature on this form is illegible.

⁴ The August 4, 2015 letter was sent to appellant’s proper address of record.

questionnaire. Appellant asserted that she did not receive OWCP's August 4, 2015 letter and questionnaire.

By decision dated September 10, 2015, OWCP denied appellant's claim for a work-related July 14, 2015 injury. It discussed the evidence submitted by appellant and noted:

"You have established that you are a Federal civilian employee who filed a timely claim; however, after a thorough review of all evidence, your claim is denied because the factual component of the third basic element, Fact of Injury, has not been met.

"Specifically your case is denied because the evidence is not sufficient to establish that the event(s) occurred as you described. The reason for this finding is that you did not respond to the questionnaire that was sent to you with the development letter that would establish the factual component of your claim.

"Based on these findings, your claim is denied on the factual component of the third basic element, Fact of Injury, because the evidence does not support that the injury and/or event(s) occurred. The requirements have not been met for establishing that you sustained an injury as defined by FECA."

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA, that an injury was sustained 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.⁵ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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.⁷ Second, the employee must submit

⁵ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. § 10.5 (q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

⁷ *Julie B. Hawkins*, 38 ECAB 393 (1987).

evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

ANALYSIS

Appellant alleged that she sustained a work-related right toe sprain at 10:30 a.m. on Tuesday, July 14, 2015. Regarding the cause of the claimed injury, appellant noted, “Stubbed right toe on curb.”

The Board finds that appellant has not established her claim for a work-related injury because she did not establish the fact of injury aspect of the claimed July 14, 2015 injury.⁹ Appellant did not describe her claimed injury with sufficient specificity to determine whether the injury occurred in the performance of duty. Her brief description of the injury does not allow a determination that she actually experienced the employment incident at the time, place, and in the manner alleged.¹⁰ Although appellant provided the time and place of the claimed July 14, 2015 injury she did not adequately describe the mechanism of the injury, or what she was doing at the time of the injury.

OWCP requested that appellant provide additional details regarding the claimed July 14, 2015 injury by responding to a questionnaire attached to an August 4, 2015 development letter it sent to her. However, appellant did not respond to OWCP’s request within the allotted time. In a record of a September 10, 2015 telephone conversation, appellant claimed that she had not received OWCP’s August 4, 2015 letter and questionnaire. Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is known as the mailbox rule.¹¹ OWCP’s August 4, 2015 letter and questionnaire were sent to appellant’s address of record and are presumed to have been received by her absent any notice of nondelivery. Appellant has not submitted evidence to rebut this presumption.

For these reasons, appellant has not met her burden of proof to establish an injury in the performance of duty on July 14, 2015. She 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.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an injury in the performance of duty on July 14, 2015.

⁸ *John J. Carlone*, 41 ECAB 354 (1989).

⁹ There is no dispute that appellant is an “employee of the United States” within the meaning of FECA. *See supra* note 4.

¹⁰ *See supra* note 6.

¹¹ *See James A. Gray*, 54 ECAB 277 (2002).

ORDER

IT IS HEREBY ORDERED THAT September 10, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 11, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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