

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

S.R., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Pasadena, TX, Employer)

**Docket No. 14-1707
Issued: January 5, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 1, 2014 appellant filed a timely appeal from a March 13, 2014 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.²

ISSUE

The issue is whether appellant met her burden of proof to establish traumatic injury in the performance of duty on January 15, 2013.

FACTUAL HISTORY

On January 30, 2014 appellant, then a 52-year-old custodial laborer, filed a traumatic injury claim alleging that on January 29, 2014 she sustained a respiratory condition due to smoke

¹ 5 U.S.C. § 8101 *et seq.*

² On appeal, appellant submitted new evidence. However, the Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

inhalation in the performance of duty. She indicated that smoke inhalation caused her head pain, eye pain and sinus congestion. Appellant stopped work on January 30, 2014 and returned on February 3, 2014. The employing establishment controverted the claim, explaining that appellant noted that she was injured at 9:30 a.m. However, appellant's supervisor indicated that this was when there was first recognizable smoke in the building.

In a February 11, 2014 letter, OWCP advised appellant that additional factual and medical evidence was needed. It advised her that the employing establishment was challenging the claim based upon fact of injury as it did not believe that the smoke inhalation caused her condition. OWCP asked appellant to provide a detailed description of where she was and what she was doing at the time the claimed injury occurred. It also asked that she provide statements from any persons who witnessed her injury or had immediate knowledge of it and state the immediate effects of the injury.

On February 14, 2014 appellant signed a certification that accompanied OWCP's February 11, 2014 letter but no statement from appellant describing the circumstances of her claimed injury accompanied this letter.

OWCP received a letter dated February 19, 2014, from Robin Young Williams, a human resource specialist with the employing establishment acknowledging the claim. Accompanying this was a letter dated January 31, 2014, from Monica Coleman, an employing establishment manager, in which she noted that she reported appellant's claimed injury on January 30, 2014. She reported that there was a faulty electrical wire incident. Ms. Coleman advised that there was the smell of burning wires and the building was evacuated for two hours while firemen and upper management investigated the situation. She noted that appellant and two other custodians assisted the firemen with building schematics in the upper lobby and conference room. Ms. Coleman indicated that the employing establishment was contesting appellant's claim.

Appellant also submitted January 30, 2014 hospital discharge instructions for headache, and a nurse practitioner's discharge instructions and duty status report indicating that appellant could perform regular work full time.

In a letter dated February 25, 2014, Monique H. Nguyen, a health and resource management specialist also controverted the claim. She asserted that fact of injury was questionable and no causal relationship was established. Ms. Nguyen indicated that the building was immediately evacuated for two hours when the employing establishment noticed a smell similar to melting plastic. She indicated that there was no fire and it was an electrical issue. Furthermore, appellant and two employees remained to assist the firemen in the upper lobby to the conference room which was "away from the affected area." Ms. Nguyen also noted that appellant had worked for the employing establishment for 32 years and had five injuries. She also noted that appellant's leave balances were at zero.

By decision dated March 13, 2014, OWCP denied appellant's claim as the evidence of record was insufficient to establish that appellant sustained the employment incident as alleged. She had failed to provide details of where she was and how her condition occurred. Appellant was also advised that the medical evidence was from a nurse or nurse practitioner, and not from a qualified physician under FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 timely filed within the applicable time limitation period of FECA⁴ and that an injury was sustained in the performance of duty.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 fact of injury has been established. There are two components involved in establishing 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. Second, the employee must submit 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 his subsequent course of action. An employee has not met his or her burden of proof 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

Appellant alleged that on January 29, 2014 she sustained a respiratory condition in the performance of duty. OWCP found that the evidence was insufficient to establish that the incident occurred as alleged. The Board finds that OWCP properly determined that the factual evidence was insufficient to establish that the January 29, 2014 employment incident occurred at the time, place, and in the manner alleged.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *Delores C. Ellyett*, 41 ECAB 992 (1990).

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).

In a February 11, 2014 letter, OWCP advised appellant of the factual evidence needed to establish her claim. It asked her to provide a detailed description of where she was and what she was doing at the time the claimed injury occurred. However, appellant did not provide any further details or other evidence confirming how the claimed injury occurred. The only information from her about the claimed injury is the vague information contained on the January 30, 2014 notice of traumatic injury. The employing establishment controverted the claim and provided statements that cast doubt on appellant's assertion. In a letter dated February 25, 2014, Ms. Nguyen of the employing establishment indicated that the building was immediately evacuated for two hours when a smell similar to melting plastic was noticed. She stated that there was no fire and appellant was "away from the affected area." Additionally, the January 31, 2014, statement of Ms. Coleman, a manager, disputed that appellant was in an area in which she had any smoke inhalation on January 29, 2014. These statements, together with appellant's failure to provide a detailed description of the claimed incident, cast doubt on her statement that she had smoke inhalation on January 29, 2014. The Board finds that she has not established the occurrence of the January 29, 2014 work incident as alleged and therefore has not met her burden of proof to establish that she sustained an employment-related injury on January 29, 2014.¹⁰

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.

CONCLUSION

The Board finds that this appellant did not meet her burden of proof in establishing that she sustained a traumatic injury in the performance of duty on January 29, 2014.

¹⁰ As appellant did not meet her burden to establish the occurrence of an employment incident, it is not necessary to consider the medical evidence with regards to causal relationship. See *Bonnie A. Contreras*, 57 ECAB 364 (2006).

ORDER

IT IS HEREBY ORDERED THAT the March 13, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 5, 2015
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