

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on July 22, 2013.

FACTUAL HISTORY

On February 5, 2014⁴ appellant, then a 30-year-old mail handler, filed a traumatic injury claim alleging that on July 22, 2013 she injured her back while opening a gate in the performance of duty.

In support of her claim, appellant submitted Florida Workers' Compensation Medical Forms dated August 12 and 20, 2013 from Dr. Arturo J. Gazo, a treating Board-certified family medicine practitioner, who diagnosed lower back pain and lumbar strain and noted an injury date of August 1, 2013.

The employing establishment submitted a January 31, 2014 case summary investigative report by Special Agent, Kevin Tatton, Office of Inspector General, who related an employment injury history which included that appellant had been disabled from working due to an accepted February 21, 2011 employment injury. Mr. Tatton related that appellant accepted the employing establishment's offer of a modified mail handler position, returned to work on July 18, 2013, and stopped work on July 23, 2013.

In a statement dated February 5, 2014, appellant detailed her return to a light-duty job following being off work on disability and sustaining a new work injury on July 22, 2013. She stated that her modified job assignment involved driving trucks to stations and exchanging a functioning truck for one that needed service. Appellant stated that she had to open the stations gates, drive into the station, and exchange the truck she had been driving for the one that required service. While making an exchange at one location, she stated that she had difficulty opening the gate and could not get it open by herself. An unidentified male waiting in his car at this location helped appellant to open the gate which was rusty and would not open without being forced. Appellant then went to a different location. It had a tall gate on wheels which barely moved when she tried to open it. Appellant related that she had to push the gate with all her strength and finally opened it. She felt a strain in her back. Appellant stated that she took medicine when she got home and called her supervisor in the morning to let him know that she was in pain and could not work.

In a February 19, 2014 letter, the employing establishment noted that appellant had accepted a modified job offer and began the position on July 18, 2013 before she stopped work on July 23, 2013. On July 22, 2013 appellant worked from 2:45 p.m. to 3:09 p.m. The employing establishment contested the reported date of injury because she "did not have enough time to report to a station that day." It noted that another modified job had been created on August 1, 2013 for appellant based on her complaints that she had difficulty with opening gates

⁴ This was the date of notice. At the bottom of page one on the form appellant noted January 29, 2014 as the date she signed the form.

at various stations. Appellant accepted this position and began work on August 10, 2013 before she again stopped work on August 16, 2013.

In a March 3, 2014 letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised as to the medical and factual evidence required and given 30 days to provide this information.

In a February 5, 2014 investigation report, Mr. Tatton detailed surveillance findings from October 2013 to January 2014. He also provided a background of appellant's employment injury history from 2011 to the present as well as a synopsis of his findings. The report stated that appellant had been disabled from working due to an accepted February 21, 2011 employment injury prior to returning to a modified job. Mr. Tatton noted that appellant accepted a modified mail handler position, returned to work on July 18, 2013, and then stopped work on July 23, 2013.

By decision dated April 7, 2014, OWCP denied appellant's claim as the evidence of record failed to establish that the incident occurred as alleged. It found that she failed to provide the requested factual evidence addressing questions regarding the alleged July 22, 2013 incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 the applicable time limitation; 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 employment injury.⁶ 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.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁸ 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.⁹ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.¹⁰

⁵ 5 U.S.C. § 8101 *et seq.*

⁶ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁷ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 6.

⁹ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

¹⁰ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 6.

ANALYSIS

The Board finds that the factual evidence is insufficient to establish that the employment incident occurred as alleged. Appellant reported that she injured her back while opening gates on July 22, 2013.

Appellant alleged that she injured her lower back on July 22, 2013, but she delayed filing her claim for a traumatic injury until February 5, 2014. The only medical evidence submitted was two form reports by Dr. Gazo dated August 12 and 20, 2013. Dr. Gazo reported an injury date of August 1, 2013 and diagnosed lower back pain and lumbar strain. He did not provide any history of the injury other than noting the date it allegedly occurred, August 1, 2013. This was not the July 22, 2013 injury date appellant identified on her claim.

Appellant notified the employing establishment of the injury some six and one-half months after the fact. She did not seek immediate medical attention and has only provided vague information regarding the incident. Appellant identifies the duty of opening up gates at postal locations, but does not specifically name the locations or provide further details regarding her alleged incidents. She also reported that she received assistance in opening a gate at one location, but provided no witness statement or identification for the person who assisted her. The employing establishment stated that on July 22, 2013 the record indicated that appellant worked from 2:45 p.m. to 3:09 p.m. Because appellant worked less than an hour on July 22, 2013, this raises questions about what job duties she performed in that narrow window of time. The defects noted by the Board in the factual evidence are sufficient to conclude that the events alleged by appellant are not proven.

The Board therefore finds that appellant has failed to establish fact of injury. Appellant did not submit sufficient evidence to establish that she actually experienced an employment incident at the time, place, and in the manner alleged.¹¹

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 appellant has failed to meet her burden of proof to establish that she sustained an injury in the performance of duty.

¹¹ *V.H.*, Docket No. 12-1621 (issued December 21, 2012); *Alvin V. Gadd*, 57 ECAB 172 (2005); *Barbara R. Middleton*, 56 ECAB 634 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 7, 2014 is affirmed.

Issued: June 17, 2015
Washington, DC

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

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

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