



On appeal, appellant stated that she was instructed to go out in a storm and redeliver a regular carrier's mail on Route 19. When she was exiting a building she slipped down a flight of steps, injuring her buttocks and lower back.

### **FACTUAL HISTORY**

On June 16, 2014 appellant, then a 43-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that she sustained a lower back sprain on June 13, 2014 due to a slip and fall on "water on steps of building." She stopped work on June 14, 2014 and has not returned.

In reports dated June 19 and 26, 2014, Dr. Carol Tunney, a family medicine specialist, stated that appellant was under evaluation for a severe back, neck, and leg injury which occurred due to a significant fall down wet steps on June 13, 2014 while performing the duties of her employment. She indicated that appellant was first seen at the clinic on June 16, 2014 and due to the severity of the injury she was prescribed medications that caused sedation and altered mental status. Dr. Tunney reported that appellant underwent x-rays and a magnetic resonance imaging (MRI) scan on June 24, 2014 and the results remained pending. She took appellant off work until August 4, 2014.

In a July 9, 2014 letter, OWCP notified appellant of the deficiencies of her claim and requested a detailed description as to how the alleged injury occurred. It afforded her 30 days to submit additional evidence and respond to its inquiries. Appellant did not respond.

By decision dated August 20, 2014, OWCP denied appellant's claim finding that the evidence submitted was not sufficient to establish fact of injury as she did not submit factual evidence "to support that the injury and/or events occurred."

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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<sup>4</sup> was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup>

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> OWCP regulations define 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. 20 C.F.R. § 10.5(ee).

<sup>5</sup> See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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. A fact of injury determination is based on two elements. 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 sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.<sup>6</sup>

An employee has the burden of establishing the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee’s statements must be consistent with surrounding facts and circumstances and his or her subsequent course of action.<sup>7</sup> 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. Such circumstances 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 sufficient doubt on an employee’s statement in determining whether a *prima facie* case has been established. An employee’s statement alleging 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.<sup>8</sup>

The employee must also submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.<sup>9</sup>

### ANALYSIS

Appellant alleged that she sustained an injury on June 13, 2014 due to “water on steps of building.” On appeal, she stated that she was instructed to go out in a storm and redeliver a regular carrier’s mail on Route 19. When she was exiting a building she slipped down a flight of steps injuring her buttocks and lower back. Appellant submitted reports from Dr. Tunney who indicated that she was first seen at the clinic on June 16, 2014 and evaluated for a severe back, neck, and leg injury. Dr. Tunney indicated that appellant’s injury occurred due to a significant fall down wet steps on June 13, 2014 while performing the duties of her employment. She also reported that the results from an MRI and x-rays taken on June 24, 2014 remained pending.

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<sup>6</sup> *Id.* See Shirley A. Temple, 48 ECAB 404 (1997); John J. Carlone, 41 ECAB 354 (1989).

<sup>7</sup> See Joseph H. Surgener, 42 ECAB 541, 547 (1991); Gene A. McCracken, Docket No. 93-2227 (issued March 9, 1995).

<sup>8</sup> See D.B., 58 ECAB 529 (2007); Robert A. Gregory, 40 ECAB 478 (1989); Thelma S. Buffington, 34 ECAB 104 (1982).

<sup>9</sup> See J.Z., 58 ECAB 529 (2007).

The Board finds that the factual evidence is insufficient to establish that the employment incident occurred as alleged, *i.e.*, that appellant fell down steps on June 13, 2014. Appellant did not seek immediate medical attention. The record indicates that she failed to obtain medical treatment until June 16, 2014, three days after the incident in question. Appellant stated that she was delivering mail on Route 19 in a storm when she slipped and fell down a flight of steps, but she failed to identify the building and its location, or describe the manner of her fall. She did not provide a detailed account of the incident, as required in a traumatic injury claim.<sup>10</sup> Appellant's allegations were vague and did not relate with specificity the circumstances, or the exact and immediate consequences, of the injury.<sup>11</sup> She submitted no witness statements in support of her claim. Although OWCP specifically asked appellant to provide a detailed description as to how the alleged injury occurred, she provided no additional information prior to the August 20, 2014 merit decision. Appellant has not offered any explanation for these factual deficiencies in her claim. As noted above, such defects in the factual evidence are sufficient to cast doubt on whether the employment incident occurred as alleged.<sup>12</sup>

Appellant has failed to establish fact of injury: she did not submit sufficient evidence to establish that she actually experienced an employment incident at the time, place, and in the manner alleged. Since she failed to establish the first component of fact of injury, it is not necessary to discuss whether she submitted medical evidence sufficient to establish that a medical condition existed and whether the condition was causally related to the employment factors alleged.<sup>13</sup> Thus, Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on June 13, 2014, as alleged.

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 not met her burden of proof to establish an injury in the performance of duty on June 13, 2014, as alleged.

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<sup>10</sup> See *V.H.*, Docket No. 12-1621 (issued December 21, 2012).

<sup>11</sup> *Id.*

<sup>12</sup> See *S.M.*, Docket No. 12-946 (issued on January 29, 2013) (where the employee alleged that she fell down stairs at work, the Board found that the factual evidence was not sufficient to establish that the employment incident occurred as alleged on the basis that she provided late notification of injury, did not seek immediate medical attention, and provided no witness statements).

<sup>13</sup> See *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997). As appellant failed to establish that the claimed event occurred as alleged, it is not necessary to discuss the probative value of medical evidence. *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 20, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 19, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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