

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

A.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Amherst, NY, Employer**

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**Docket No. 15-162
Issued: March 3, 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
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On November 3, 2014 appellant filed a timely appeal from an October 1, 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 sustained an injury on August 5, 6, or 7, 2014 while in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted new evidence on appeal. The Board has no jurisdiction to review new evidence on appeal. 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 and 20 C.F.R. §§ 10.605 through 10.607. *See* 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On August 8, 2014 appellant, then a 64-year-old part-time city carrier, filed a traumatic injury claim alleging that on August 5, 6 and/or 7, 2014 she twisted her left hand attempting to get mail out of a crowded mailbox.³ She did not stop work.

By letter of appellant's supervisor dated August 18, 2014, the employing establishment controverted the claim as appellant did "not know the date and time the accident happened."

In duty status and form reports dated August 8 and 15, 2014, Christine Terryberry, a physician assistant, diagnosed left hand strain and found that appellant could perform her regular work duties. The duty status reports contain no articulated history of injury.

By letter dated August 28, 2014, OWCP informed appellant that the evidence was currently insufficient to establish that she experienced the claimed work incident. It noted that she did not provide the exact date of injury. OWCP further advised appellant that the medical evidence was not signed by a physician as required under FECA. It requested that she submit a detailed statement providing the date of injury and fully describing the work event and her subsequent actions. OWCP additionally requested a comprehensive medical report addressing the relationship between any diagnosed condition and the identified employment incident.

In a report dated August 8, 2014, received by OWCP on August 29, 2014, Kristen Siperek, a physician assistant, obtained a history of appellant experiencing left hand pain "developing over the past three days while attempting to remove mail from an overstuffed mail box."⁴ On examination she found mild tenderness with flexion and a squeeze test with no swelling or loss of sensation. Ms. Siperek advised that appellant could perform her usual employment. On August 15, 2014 Ms. Terryberry performed a follow-up examination. She diagnosed hand sprain and noted that appellant's symptoms had improved.

By decision dated October 1, 2014, OWCP denied appellant's claim as she had failed to establish an injury in the performance of duty. It found that the evidence was insufficient to establish the occurrence of the claimed work incident. OWCP further found that appellant had not submitted medical evidence from a qualified physician.

On appeal appellant alleged that she was sent by the employing establishment for an examination and did not know that she had to be examined by a qualified physician. She related that she had not missed any work. Appellant indicated that her supervisor challenged her claim on her traumatic injury claim form after she signed the form.

³ Appellant provided the dates on the claim form without indicating whether the work incident occurred on all of these dates or one of these dates. If the claimed work factor occurred over more than one work shift, her claim would be properly adjudicated as an occupational disease. See 20 C.F.R. § 10.5(q).

⁴ It does not appear that Ms. Siperek is a physician.

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 an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, the employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.⁸ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁹ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.¹⁰

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.¹¹ An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee’s statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.¹² An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹³ 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 doubt on an employee’s statements in determining

⁵ 5 U.S.C. § 8101 *et seq.*

⁶ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁷ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁸ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁹ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹⁰ *Id.*

¹¹ *See Louise F. Garnett*, 47 ECAB 639 (1996).

¹² *See Betty J. Smith*, 54 ECAB 174 (2002).

¹³ *Id.*

whether time, place, and manner has been established.¹⁴ However, an employee's statement regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong or persuasive evidence.¹⁵

ANALYSIS

On August 13, 2014 appellant filed a traumatic injury claim alleging that on either August 5, 6, or 7, 2014 she injured her left hand getting mail out of a full mail box. OWCP denied her claim after finding that she had not demonstrated that the specific event occurred at the time, place, and in the manner described.

The initial question presented is whether appellant has established that the employment incident occurred as alleged. The Board finds that she has not established the occurrence of the alleged August 2014 work injury.¹⁶ By letter dated August 28, 2014, OWCP requested that appellant submit a detailed description identifying the exact date of injury and what happened on the date of injury that resulted in an injury. Appellant did not respond to OWCP's request for a full account of the employment incident alleged to have caused her condition. Further, the evidence submitted by the physician assistants does not contain an exact date of injury. Appellant has the burden to submit a factual statement identifying the employment factors alleged to have caused the occurrence of the claimed disease or condition.¹⁷ As she did not provide a factual statement describing in detail the events that caused the injury and the date of injury, she has not met her burden of proof.

On appeal appellant alleges that she did not know that she had to seek medical treatment from a qualified physician. As she has not established the factual occurrence of the claimed work event, it is not necessary to evaluate the medical evidence. The Board notes, however, that the reports of the physician assistants are entitled to no weight as they are not considered "physicians" as defined by section 8101(2) of FECA.¹⁸

Appellant further alleges that she signed her claim form before her supervisor challenged the claim on the grounds that she did not specify a date and time of injury. As noted, however, she has the burden to submit sufficient evidence to establish that she experienced the employment incident at the time, place, and in the manner alleged.¹⁹

¹⁴ *Linda S. Christian*, 46 ECAB 598 (1995).

¹⁵ *Gregory J. Reser*, 57 ECAB 277 (2005).

¹⁶ Appellant did not specify an exact date of injury. If she believes that work events occurring over the course of more than one work shift caused her condition, she should file an occupational disease claim. Under FECA, a traumatic injury is defined 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." 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q).

¹⁷ *See D.G.*, Docket No. 13-870 (issued July 16, 2013).

¹⁸ *See* 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551 (2002).

¹⁹ *See B.K.*, Docket No. 09-2072 (issued May 18, 2010).

CONCLUSION

The Board finds that appellant has not established that she sustained an injury either on August 5, 6, or 7, 2014 while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the October 1, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board