

steps, causing him to fall forward and strike his head. He stated that he then grabbed the handrail and fell backwards. Appellant indicated that the coworker who found him stated that appellant had been unconscious. He claimed that he sustained a closed head injury and injuries to the left side of his neck, shoulder, back, and left leg due to this fall. The employing establishment challenged the claim because two witnesses stated there was no coffee or liquid on the stairs and the investigation of the incident did not support appellant's statement. It noted that appellant was aware of pending disciplinary action prior to the event.

In a June 6, 2013 letter, the employing establishment continued to challenge the claim. It noted that appellant's supervisor, Annette Couchenour, had met with appellant on May 6, 2013 to discuss his performance. The employing establishment stated that it could not be substantiated that an actual slip occurred due to coffee on the stairs based on witness reports and noted that no report of a spill in the area had been made. Statements from Ms. Couchenour and Mildred Aday, a coworker, were provided.

Ms. Couchenour stated that at approximately 7:45 a.m. on May 7, 2013 she was notified that appellant was found in the stairwell and emergency services transported him to the emergency room. She noted that on May 21, 2013 she contacted appellant who advised that he was unable to return to work pending an evaluation on May 29, 2013. Ms. Couchenour stated that appellant told her that he was walking up the second set of stairs and noted coffee on the floor. Appellant thought that he needed to come back and wipe it up and then he stepped over the coffee and slipped and fell forward, putting his arm up to protect himself. However, he hit his head on the step, and then grabbed the rail with his right hand, stood up, and then fell backwards. Ms. Couchenour stated that appellant denied a loss of consciousness. She noted that she met with him on April 30 and May 6, 2013 regarding his performance which could lead to discipline. Ms. Couchenour enclosed statements from the staff members initially on the scene, Mildred Aday, Napoleon Washington, and Lisa Williams.

Ms. Aday stated that on May 7, 2013 at approximately 8:00 a.m. she opened the door to go upstairs, but saw appellant lying flat on his back and not moving on the lower platform, with both heels laying on the second step. She stated that she did not see blood or liquid on the staircase and did not actually see him fall. Ms. Aday indicated that Ms. Williams and another coworker Edwina Tellis, were the first to make contact with appellant and remained with him until 911 arrived.

Mr. Washington stated that Ms. Aday was standing at the entrance door yelling that appellant was on the floor and several staff went to the stairs. He stated that he observed appellant lying on his back in the middle part of the stairs with both feet on the stairs and that he was not responsive when the staff tried to rouse him. Mr. Washington noted that he got wet paper towels and, after squeezing the water out three times, appellant finally responded, but he was confused and did not answer questions properly. He stated that he did not recall if there was any liquid on the stairs where appellant was found, but noted that there were several staff in that area and he left the area when the paramedics arrived. Mr. Washington noted that he did not look for fluids on the stairs when he reentered the building.

Ms. Williams stated on May 7, 2013 that she ran down the stairs when she heard Ms. Aday yelling for help and she met Rita Plata and Mr. Washington by appellant. She stated

that appellant was lying in the second landing of the stairwell and that his lower extremities were up against the second and third step leading upstairs. Ms. Williams stated that appellant was lethargic, but arousable to verbal stimuli and oriented to self, but not place.

By letter dated June 21, 2013, OWCP advised appellant of the medical evidence needed to support his claim. It did not ask him to address the employing establishment's challenge of the claim.

In a May 29, 2013 report, Dr. David Isradisaikul, an attending Board-certified neurologist, stated that appellant had been hospitalized from May 7 to 10, 2013 at Methodist Hospital. He noted that appellant recalled walking up a staircase and falling forward and then supposedly falling backwards. Dr. Isradisaikul stated that appellant lost consciousness for 10 to 15 minutes and had been foaming at the mouth. He noted that appellant had issues remembering answers to questions ever since. Dr. Isradisaikul stated that appellant reported left-sided neck pain, left shoulder pain, and pain in his upper and lower back, but that diagnostic testing was negative. He stated that appellant feels his speech was slurred and he had been occasionally vertiginous. Dr. Isradisaikul assessed appellant with what appeared to be a postconcussion syndrome, as appellant struggled with speech, nausea, vertigo, headaches, mood, and mentation, and also developed several areas of pain since his fall. He indicated that appellant was unable to return to work.

Dr. Isradisaikul noted in a June 26, 2013 report that he had reviewed the Methodist Hospital records and noted it was felt on initial evaluation that appellant had a concussion. He stated that appellant supposedly fell approximately three feet. Dr. Isradisaikul noted that the speech pathologist found moderate impairments and inconsistent performance that was atypical at times. He recommended that appellant remain off work due to his self-reporting of difficulty with his mentation.

By decision dated July 30, 2013, OWCP denied appellant's claim on the basis that fact of injury had not been established. It stated:

“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 the facts stated by you in your claim are conflicting and found to be untrue. You claimed that while going up stairs you slipped and fell on some spilled coffee which was present on the steps of the stairs. We have received a witness statement that on May 7, 2013 at approximately 8:00 a.m. they opened the upstairs with plans of going down stairs. However, when they opened the door, they saw you [lying] flat on your back with your eyes closed and not moving on the platform. Both your heels were resting on the second step.... There was no evidence of blood or liquid on the staircase nor did they see you fall.”

On August 18, 2013 appellant's representative requested an oral hearing. He later changed this to a request for a review of the written record.

By report dated August 19, 2013, Dr. Edward Wolski, an attending family practitioner, described the claimed work injury, the results of appellant's diagnostic testing at the hospital,

and his prior medical history. He indicated that appellant's current symptoms were anxiety, headaches, double vision, left-sided hearing loss, forgetfulness, poor concentration, crying, loss of balance, dizziness, difficulty walking, weakness, photophobia, poor appetite, vomiting, and trouble controlling the bowels. Dr. Wolski diagnosed postconcussion syndrome, cervical and lumbar radiculitis, and cervical, thoracic, lumbar, and left shoulder sprains. He opined that appellant sustained these injuries due to his May 7, 2013 fall.

In a September 17, 2013 statement, Anthony McIntyre, a coworker, stated that on the date of the alleged incident, at approximately 8:00 a.m., he was sitting at his desk in the Community Home Care office at the Veterans Resource Center at the Herzog Building. He noted his desk faces west and that his office was about 10 to 12 feet from the stairwell and door. Mr. McIntyre stated that one of the nurses was about to leave and that, when she opened the door to go downstairs, she yelled out that appellant was lying on the floor in the stairwell. He stated that he went behind her to find appellant lying on his back on the landing of the stairwell of the building with his arms out to his side with his head turned to the right with some saliva coming from his mouth and running down his cheek. Mr. McIntyre stated that appellant seemed groggy and did not immediately respond. He stated that they shook appellant and called his name and appellant stated that his "head hurt." Appellant's glasses and other personal items were found next to him. Mr. McIntyre applied an ice bag to appellant's groin and appellant did not get up during this time. He stated that, after more nurses arrived, he moved out of the way and they called 911 and then the paramedics came and transported appellant to the hospital.

In a March 10, 2014 brief, appellant's representative argued that appellant's claim should be accepted as it was a simple traumatic injury and there is no evidence to support the link between appellant's fall and his disciplinary actions. He contended that the witness statements supported that appellant actually experienced the employment incident on May 7, 2013. Counsel stated that while the employing establishment challenged the claim because no coffee was found on the steps, it was unclear whether any of the witnesses were looking for liquid on the steps. He noted an injury does not have to be witnessed in order to be accepted and that the employing establishment's challenge was insufficient to refute appellant's statement.

By decision dated April 14, 2014, OWCP hearing representative affirmed OWCP's July 30, 2013 decision. She found that the fact of injury on May 7, 2013 had not been established due to inconsistencies in the case record and stated:

"In the present claim, I find there are still unexplained discrepancies regarding the fact of injury in the claim. While the claimant very clearly stated he saw coffee on the stairs that he had to step over at work on May 7, 2013, there is no corroborative evidence to support there was coffee, or any type of liquid on the stairs. This is a serious discrepancy, considering there were several witnesses to the condition of the stairs at the time they found the claimant, and none stated they saw any liquid or hazard on the stairs....

"Another significant discrepancy is that there are no medical records from the May 7, 2013 emergency department visit submitted to the case record. Such records would be crucial to document any objective findings on examination, which would be helpful, as the claimant's May 7, 2013 diagnostic test results

were negative for any signs of a traumatic injury. Another discrepancy is that although the claimant claimed he sustained multiple serious injuries, he did not seek further medical attention after May 7, 2013 for over two weeks....”

Appellant’s representative requested reconsideration on behalf of appellant and submitted a July 10, 2014 brief arguing that appellant’s claimed May 7, 2013 work injury should be evaluated under the idiopathic fall line of cases. Additional medical evidence was submitted to OWCP.

In an October 7, 2014 decision, OWCP affirmed its April 14, 2014 decision denying appellant’s claim for a work-related injury on May 7, 2013. It continued to find that the fact of injury had not been established due to inconsistencies that cast doubt upon the validity of appellant’s claim.

LEGAL PRECEDENT

An employee who claims benefits under FECA 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.² 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, but the employee’s statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.³ 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.⁴ 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 statements in determining whether a *prima facie* case has been established.⁵ However, 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.⁶

ANALYSIS

On May 24, 2013 appellant filed a traumatic injury claim alleging that on May 7, 2013 he was walking upstairs and slipped on coffee on the steps, causing him to fall forward and strike his head. OWCP denied appellant’s claim finding that he did not establish the incident on May 7, 2013 due to inconsistencies in the case record regarding the claimed injury.

² *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

³ *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

⁴ *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

⁵ *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

⁶ *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

The Board finds that there are not sufficient inconsistencies in the case record regarding appellant's claimed May 7, 2013 injury to cast doubt on that fact that a work incident occurred on that date as alleged. Appellant's claim of a May 7, 2013 fall has not been refuted by strong or persuasive evidence. Therefore, he has established that he sustained a work incident on May 7, 2013 when he fell on stairs at work.

The Board notes that appellant has consistently described the nature of the fall that he sustained on May 7, 2013. Although he alleged that he slipped on coffee on the stairs and witnesses indicated that they did not observe liquid on the stairs on May 7, 2013, this does not pose a serious inconsistency because it remains unclear to what extent the witnesses were looking for liquids. In fact, the testimony of several witnesses adds credence to appellant's claim that he sustained a fall on May 7, 2013 as they observed appellant in a prone position on the stairs and in a dazed condition around the time of the claimed fall. Moreover, it appears that appellant sought prompt care for his claimed injury and any apparent gaps in his treatment were not so great as to cast doubt on his claim. The symptoms observed by attending physicians were consistent with appellant suffering a fall.

Given that appellant has established a work incident in the form of a fall at work on May 7, 2013, the case shall be remanded to OWCP to consider whether the medical evidence of record shows that he sustained a medical condition due to that incident. After carrying out this development, OWCP shall issue an appropriate decision regarding appellant's claimed May 7, 2013 work injury.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant sustained an injury in the performance of duty on May 7, 2013. Appellant has established a work incident on May 7, 2013 but the case is remanded to OWCP to determine whether he sustained a medical condition due to that incident.

ORDER

IT IS HEREBY ORDERED THAT the October 7, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: March 12, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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