

FACTUAL HISTORY

On October 14, 2014 appellant, then a 60-year-old rural mail carrier, filed a traumatic injury claim alleging that on October 2, 2014 she felt her right knee pop while she was walking across the workroom floor and that she then could not bear weight or stand. She stopped work that day. The postmaster, John T. Porada, completed an OWCP CA-16 form authorizing medical treatment. An incident report stated that appellant's right knee was injured as she was walking across the floor.

In an October 3, 2014 treatment note, Dr. Abraham H. Rosenzweig, a Board-certified orthopedic surgeon, noted a history that on October 2, 2014 appellant developed pain and swelling when she had an episode of right knee instability and she was unable to bear weight. He provided physical examination findings and diagnosed probable traumatic subluxation of the patella with underlying patellofemoral joint arthritis. Dr. Rosenzweig recommended physical therapy and medication. On October 10, 2014 he advised that appellant continued to have right knee pain and swelling. Dr. Rosenzweig stated that, although the pain and swelling developed while she was working, there was no specific injury. He recommended a diagnostic arthroscopy, which was scheduled for November 3, 2014.

By letter dated November 3, 2014, OWCP informed appellant that when her claim had been received, it appeared to be a minor injury resulting in minimal or no lost time from work, but that her claim had now been reopened for consideration because she had not yet returned to work. It informed her of the type of evidence needed to support her claim, and gave her 30 days to provide the requested information.

In a statement dated October 2, 2014, appellant related that, as she reported for work that day, she first entered the postmaster's office and then, as she walked toward her desk, she felt her knee pop, dropped her belongings, and grabbed for anything to break her fall. She stated that she could not bear weight and may have tripped over packages, but could not confirm this. Appellant indicated that she then went to an urgent care facility, was given crutches, and was told to follow up with her physician.

Florence J. Palmer, a coworker, provided a statement on November 12, 2014. She indicated that on October 2, 2014 she heard appellant cry out, saw her drop the mail she was carrying and almost fall, but that Sherry Fancher, another coworker, ran over to steady her and got her a chair. Ms. Palmer related that appellant could not stand. Ms. Fancher also noted in her statement that she heard appellant cry out, and she ran to get her a chair.

On November 7, 2014 Dr. Rosenzweig reported that appellant was status post arthroscopy of the right knee that revealed severe degenerative joint disease of the patella. He recommended physical therapy. Dr. Rosenzweig provided additional follow-up reports on November 25 and December 2, 2012. On the latter date he advised that appellant was markedly improved and could return to work without restrictions on December 9, 2014.

By decision dated December 4, 2014, OWCP denied the claim. It noted that the evidence of record was insufficient to establish that the claimed right knee injury was caused by a specific factor of employment.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,² including that he or she is an “employee” within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.³ The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.⁴

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 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.⁵

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.⁶ 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 in 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. 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.⁷

ANALYSIS

The Board finds that the evidence of record supports that an employment incident occurred on October 2, 2014. Appellant claimed that she felt her right knee buckle while walking in the employing establishment. Two coworkers heard her cry out and submitted supportive statements. OWCP denied the claim asserting the evidence of record was insufficient to establish that the claimed right knee injury was caused by a specific factor of employment. However, appellant has submitted a consistent history of injury which was confirmed by supporting statements of two coworkers. The Board therefore finds that the factual evidence is

² *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

³ *R.C.*, 59 ECAB 427 (2008).

⁴ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *T.H.*, 59 ECAB 388 (2008).

⁶ *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

⁷ *Betty J. Smith*, 54 ECAB 174 (2002).

sufficient to establish that appellant experienced an employment-related incident on October 2, 2014.

The Board further finds that the case is not in posture for a decision with regard to whether the October 2, 2014 work incident caused an injury. As noted, part of an employee's burden of proof includes the submission of medical evidence addressing whether the employment incident caused a personal injury. Appellant submitted reports from Dr. Rosenzweig dated October 3 to December 2, 2014 in which he described appellant's right knee condition.

OWCP did not consider whether the medical evidence submitted was sufficient to establish the claim and also did not consider whether, regardless of the acceptance of the claim, appellant was entitled to reimbursement of medical expenses pursuant to the CA-16 form issued to her by the postmaster, Mr. Porada.⁸

Accordingly, the case will be remanded to OWCP for appropriate consideration and development of the medical evidence.⁹ After such further development as deemed necessary, OWCP shall issue an appropriate merit decision regarding appellant's claim.

CONCLUSION

The Board finds that the evidence supports that an employment incident occurred on October 2, 2014 and that the case must be remanded to OWCP to determine if appellant sustained an injury or medical condition caused by this incident.

⁸ Whereas, in this case, an employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).

⁹ *See N.W.*, Docket No. 11-530 (issued November 7, 2011).

ORDER

IT IS HEREBY ORDERED THAT the December 4, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: September 1, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board