United States Department of Labor
Employees' Compensation Appeals Board

L.G., Appellant	)	
and	)	**Docket No. 16-0856**
	)	**Issued: August 12, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Tampa, FL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On March 22, 2016 appellant filed a timely appeal from a March 4, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 met her burden of proof to establish a traumatic injury in the performance of duty on January 11, 2016.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant submitted additional evidence with her appeal to the Board. The Board cannot consider this evidence as its review is limited to evidence which was before OWCP at the time of its merit decision. 20 C.F.R. § 501.2(c)(1); *P.W.* Docket No. 12-1262 (issued December 5, 2012).

FACTUAL HISTORY

On January 19, 2016 appellant, then a 50-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 11, 2016, on her first day of on-the-job training (OJT), she stepped out of her vehicle "(rear door)" and injured her left rib in the performance of duty. She indicated that she had either a rib contusion or a fracture. Appellant stopped work on January 11, 2016. The employing establishment checked the box marked "no" in response to whether their knowledge of the facts corresponded with statements of appellant. It indicated "sick call on January 9 first OJT" and then she was injured on January 11, 2016.

In a January 15, 2016 Form CA-17 duty status report, Dr. Ritchie Plummer, an osteopath, Board-certified in family medicine, noted that appellant stepped out of her truck and fell and struck her left ribs. He found tenderness in the left ribs and prescribed sedentary work only. In a disability certificate of the same date, Dr. Plummer indicated that appellant was evaluated and treated for one week for left rib pain.

A January 16, 2016 computerized tomography (CT) scan of the chest read by Dr. Elliot Wagner, a Board-certified diagnostic radiologist, revealed no evidence of any displaced fracture in the rib cage and no pneumothorax. Additionally, the CT scan revealed postoperative status with pedicle screws and side bars at multiple levels in the dorsolumbar spine.

In a January 18, 2016 statement, Daryl Maung, a customer service supervisor, controverted the claim. He indicated that appellant called in sick on numerous occasions while attending the city carrier academy prior to being hired. Mr. Maung explained that on her first day on the job she "allegedly fell in the grass saying she bruised her ribs?" He advised that appellant also "allegedly fell" on January 11, 2016 and pointed out that it was not witnessed and appellant did not report it until January 15, 2016. Mr. Maung indicated that appellant was working the whole time until January 15, 2016. He further explained that the person who was training her did not witness the fall. Mr. Maung advised that when appellant came into the office, she indicated that she was fine and going home and returning the next day for duty. He also noted that she went to the doctor without their knowledge and then filed a claim. Mr. Maung advised that he believed the claim was "fraudulent" and she was taking advantage of the employing establishment.

By letter dated January 26, 2016, OWCP informed appellant of the type of evidence needed to support her claim and requested that she submit such evidence within 30 days. Appellant was advised that she had the burden of proof to establish that she was injured as a result of her work-related duties. OWCP informed her that she needed to submit a detailed description of how her injury occurred along with factual evidence regarding the incident to include statements from any persons who witnessed her injury or had immediate knowledge or other documentation to support her claim.

OWCP received a January 11, 2016 x-ray of the left ribs read by Dr. Kiran Chavda, a Board-certified interventional radiologist, which revealed no acute fracture or osseous abnormalities.

In a January 11, 2016 report, Dr. Harry Borno, Board-certified in emergency medicine, noted that appellant had fallen out of her employing establishment vehicle and injured her left ribs. He examined appellant, reviewed the January 11, 2016 x-rays, and diagnosed rib pain with no acute fracture and no pulmonary disease.

In a January 15, 2016 Florida Workers' Compensation Uniform Medical Treatment/ Status Reporting Form, Dr. Plummer diagnosed a rib contusion versus a fracture and prescribed sedentary duty. He checked the box marked "yes" and advised that the condition was work related. Dr. Plummer saw appellant again on January 29, 2016 and diagnosed sprain of ribs, obesity, and provided a zero percent impairment rating. OWCP also received physical therapy reports and nursing notes.

On February 8, 2016 appellant resigned from the employing establishment. She explained that, after her fall a couple of weeks ago and the enduring pain from the fall, she "realized that this career in delivering mail is not the career for me."[3]

By decision dated March 4, 2016, OWCP denied appellant's claim as she had not submitted evidence establishing that the claimed events occurred as described. It explained that the manner in which the injury occurred was not clear cut and no response explaining the details of how the injury occurred had been received.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[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 she 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]

[3] The employing establishment submitted the resignation letter along with a February 3, 2016 investigation report from the employing establishment's Office of Inspector General, covering the period January 20 to February 3, 2016. The report noted that the investigation was begun after appellant allegedly injured her ribs/back on her first day on the job on January 11, 2016 and later filed a workers' compensation claim. The report noted observations from video surveillance from January 26 to 29, 2016.

[4] *Gary J. Watling*, 52 ECAB 357 (2001).

[5] *T.H.*, 59 ECAB 388 (2008).

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 her 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

In this case, appellant alleged that on January 11, 2016 she injured a left rib when she stepped out of her work vehicle. OWCP denied her claim because she failed to establish the factual basis of her claim. The Board has carefully reviewed the record and finds that there is insufficient factual evidence to support fact of injury as alleged.

The Board notes that appellant's notice of traumatic injury provides very little description of how the claimed injury occurred. Appellant indicated that she was stepping out of the rear door of her vehicle, but did not explain how this caused the claimed injury. To clarify how the injury occurred, OWCP, in a January 26, 2016 letter, advised appellant that she needed to submit a detailed description of how her injury occurred, along with statements from any persons who witnessed her injury or had immediate knowledge of the injury or other documentation to support her claim. However, the Board notes that appellant did not respond to the request for additional factual information. The record before OWCP at the time of its March 4, 2016 decision does not otherwise have any evidence confirming how the claimed incident occurred. The need for an explanation by appellant is particularly important as the employing establishment controverted the claim and noted that there were no witnesses or other evidence to support the alleged incident. It also noted that appellant waited until January 15, 2016 to report the claimed January 11, 2016 injury. Because appellant failed to provide the requested factual information to clarify how her claimed injury occurred, the Board finds that appellant has not met her burden of proof to establish her claim.

On appeal appellant argues that her injury occurred while at work. She also noted that she was with a person named "Jesse." The Board notes however, that the record before the Board does not contain a statement from appellant or any other person addressing how the claimed incident occurred on January 11, 2016. 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.

[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).

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish a traumatic injury in the performance of duty on January 11, 2016.

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2016
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