

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

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**L.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Staten Island, NY, Employer**

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**Docket No. 16-1289  
Issued: December 8, 2016**

*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  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 2, 2016 appellant filed a timely appeal from a January 26, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant met her burden of proof to establish an injury causally related to an October 21, 2015 incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence after OWCP rendered its January 26, 2016 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

On October 27, 2015 appellant, then a 49-year-old sales and service distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained compartment syndrome and a broken blood vessel in her leg on October 21, 2015. She attributed her condition to standing on her legs and constantly taking the ferry, bus, and train as transportation to work. Appellant stopped work on October 22, 2015.

An authorization for examination and/or treatment (Form CA-16) was signed and issued by the employing establishment on October 21, 2015.

In October 22 and 30, 2015 statements, the employing establishment controverted appellant's claim, contending that she may have had a preexisting condition that caused the compartment syndrome. It also argued that medical documentation did not relate the medical condition to factors of her employment and that her description of the events on the date-of-injury contradicted what she initially told her supervisor.

In an October 22, 2015 statement, appellant's coworker, Ann Haakorsen, advised that she was at the window servicing a customer when she turned around and saw appellant in agony, hopping on one leg and holding the other.

In another October 22, 2015 witness statement, Sue Aydin, another coworker, advised that she saw appellant in pain and appellant told her she heard a snap in her left calf. She noted that appellant related that the same injury occurred before to her right leg at another employing establishment. Ms. Aydin indicated that appellant went home by herself and related that she would go to the hospital on her way home.

In an October 22, 2015 disability status report, (Form CA-17) Dr. Alok Aggarwal, a Board-certified surgeon, advised that appellant was under his care for a left leg surgical emergency and that she was unable to work.

By letter dated November 4, 2014, OWCP informed appellant of the type of evidence needed to establish her claim. This included a questionnaire in which it asked her to describe in detail how the claimed injury occurred and whether she had any similar disability or symptoms before the claimed injury. OWCP advised that appellant had 30 days to submit responsive evidence.

In an October 21, 2015 report, Dr. Aggarwal advised that appellant complained of pain and swelling in the left calf after a twisting motion injury. He noted that she related that she was standing at work when she turned around quickly and felt a pop in her left calf. Dr. Aggarwal noted that appellant's calf became progressively more swollen, painful, and tense. He noted that posterior compartment pressure was measured at 60 millimeter hydrargyrum and indicated that examination and elevated pressures were concerning for possible compartment syndrome. Dr. Aggarwal stated that appellant would be admitted for surgery. In an October 22, 2015 operative report, he advised that he performed a four quadrant fasciotomy with release of compartment pressures of the left lower extremity. Dr. Aggarwal related that the surgery was performed on an urgent basis following a sudden onset of excruciating left leg pain and swelling.

An October 21, 2015 e-mail from Supervisor Anthony DeGaeta related that appellant advised that she felt a pull in her right leg while serving a customer at the window. He noted that she told a coworker the same story and related that she sustained a similar injury at another employing establishment. In an October 22, 2015 statement, Mr. DeGaeta advised that on October 21, 2015 he was informed that appellant felt a pop in her left leg. He noted that he questioned appellant about whether it was a lifting, pulling, or pushing injury and she related that she was just standing at the window when she felt a pop and pain in her left leg. Mr. DeGaeta noted that he spoke with appellant's coworker, who was returning from her break, when she saw appellant complaining about her leg.

In an October 22, 2015 diagnostic report, Dr. Marc Jouandet, a Board-certified diagnostic radiologist, advised that a computed tomography angiogram (CTA) of the abdomen and pelvis revealed scattered calcified atherosclerotic mural plaques in the abdominal aorta and iliac arteries. A CTA of the left and right lower extremity arteries revealed infiltration in the adipose tissues in the left popliteal fossa surrounding the popliteal artery possibly representing a cellulitis or other inflammatory condition.

In an October 26, 2015 operative report, Dr. Aggarwal advised that appellant underwent closure of the fasciotomy and wound vacuum-assisted closure.

In a November 5, 2015 attending physician's report (Form CA-20), Dr. Aggarwal assessed acute compartment syndrome. He noted that appellant twisted her left calf at work and was treated with a fasciotomy of the left leg. Dr. Aggarwal checked the box marked "yes" to indicate that her condition was caused or aggravated by an employment activity. In a November 5, 2015 duty status report (Form CA-17), he assessed acute compartment syndrome and indicated that appellant was unable to work. In a November 19, 2015 duty status report (Form CA-17), Dr. Aggarwal advised that she was unable to work.

In a November 20, 2015 narrative statement, appellant advised that while at work on October 21, 2015 she went to turn and walk away from her window, after helping a customer, when she heard a loud pop in her right calf. She stated that her calf instantly started swelling. Her coworkers told her to sit down and they got several mail buckets so that appellant could put her leg up. Appellant stated that she stayed there awhile until the employing establishment started getting crowded and then she limped back to her window to help customers. She stated that she was then told to sit down and not to work. Appellant advised that she was in excruciating pain as she then limped to the bus stop and then called someone to take her to the hospital. She noted that she was operated on that day and again the next day for compartmental syndrome. Appellant asserted that her supervisor lied about the circumstances of her injury. She related that she had a prior muscle pull injury in her left leg in June 2015, for which she did not file a claim, but no prior right leg injury. Appellant also explained the different modes of transportation and the time involved in her commute to and from work.

By decision dated January 26, 2016, OWCP denied appellant's claim. It stated that she failed to establish the factual component of fact of injury, as the evidence of record was insufficient to establish that the events occurred as described. Further, OWCP found that the medical evidence of record was insufficient to establish a diagnosed condition causally related to the October 21, 2015 employment incident.

On appeal, appellant contends that she worked nine hours per day and took four trains, a ferry, and a bus to work every morning. She notes that this put a lot of pressure on the muscles in her legs, which caused her nerve to burst.

### **LEGAL PRECEDENT**

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

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.<sup>7</sup> 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 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.<sup>8</sup>

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical

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<sup>3</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

<sup>4</sup> *R.C.*, 59 ECAB 427 (2008).

<sup>5</sup> *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>7</sup> *R.T.*, Docket No. 08-0408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>8</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has established that the October 21, 2015 work incident occurred as alleged. On her October 27, 2015 traumatic injury claim (Form CA-1), appellant indicated that her injury occurred as a result of standing on her legs constantly and taking the ferry, bus, and train as transportation to work. However, in a November 20, 2015 narrative statement, responding to an OWCP request for information, she clarified that she was working at her station window and, after she helped a customer, she heard a loud pop in her calf as she turned to walk away from her window. Appellant also provided contemporaneous statements from coworkers who were with her on the date in question and recalled her complaints of leg pain consistent with her November 20, 2015 statement. The employing establishment controverted the claim and noted that she had a prior leg injury. Appellant's November 20, 2015 statement is consistent with the witness statements as well as Mr. DeGaeta's contemporaneous statements confirming that she reported feeling a pop in her leg at work. She also clarified that she had a prior right leg injury, but had no prior injury to her left leg.<sup>10</sup> Although appellant did not file her claim until October 25, 2015, she informed management and coworkers on the date of injury. As noted above, an employee's statement alleging that an incident 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. In view of the totality of the evidence, the Board finds that an employment incident occurred on October 21, 2015 in which appellant reported feeling pain in her left calf upon turning near a service window after helping a customer.

The Board, however, finds that the medical evidence of record does not establish that the accepted October 21, 2015 employment incident caused or contributed to a diagnosed medical condition.

Appellant submitted reports from Dr. Aggarwal. In an October 21, 2015 report, Dr. Aggarwal advised that she complained of pain and swelling in the left calf after a twisting motion injury at work when she felt a pop in her left calf when she turned around. He indicated that appellant had compartment syndrome, which necessitated immediate surgery. Dr. Aggarwal, however, did not explain how turning around at work would have caused or aggravated appellant's compartment syndrome.<sup>11</sup> In a November 5, 2015 attending physician's report (Form CA-20), he assessed acute compartment syndrome, noting that appellant twisted her left calf at work. Dr. Aggarwal checked the box marked "yes" to indicate that her condition was caused or aggravated by an employment activity. The Board has held, however, that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form question on whether the claimant's condition was related to the history given is of little probative

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<sup>9</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> The Board notes that the mere fact that appellant had prior leg problems does not preclude her from sustaining a separate work injury affecting the same area. See *Thelma Rogers*, 42 ECAB 866 (1991).

<sup>11</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

value.<sup>12</sup> Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.

Other medical reports of record are of limited probative value as they do not address how the October 21, 2015 work incident caused or aggravated a diagnosed medical condition.<sup>13</sup>

The Board therefore concludes that appellant did not establish a traumatic injury in the performance of duty on October 21, 2015 because she did not submit sufficient medical evidence to establish that the employment incident caused or contributed to a diagnosed medical condition.

With respect to appellant's assertions that her journey to and from work also contributed to her condition, the Board notes that such activities are not considered to be in the performance of duty. As a general rule under FECA off-premises injuries sustained by employees having fixed hours and place of work, while going to or coming home from work or during a lunch period, are not compensable as they do not arise out of or in the course of employment but are merely the ordinary, nonemployment hazards of the journey itself, which are shared by all travelers. *M.P.*, Docket No. 10-0054 (issued July 27, 2010).

The Board notes that the employing establishment executed a Form CA-16 on October 21, 2015 authorizing medical treatment. The Board has held that where 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, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.<sup>14</sup> Although OWCP denied appellant's claim for an injury, it did not address whether she is entitled to reimbursement of medical expenses pursuant to the Form CA-16.

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 causally related to an October 21, 2015 employment incident.

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<sup>12</sup> *Deborah L. Beatty*, 54 ECAB 334 (2003).

<sup>13</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>14</sup> *See D.M.*, Docket No. 13-0535 (issued June 6, 2013). *See also* 20 C.F.R. §§ 10.300, 10.304.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 26, 2016 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: December 8, 2016  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board