



On appeal, counsel contends that OWCP's March 27, 2015 decision was contrary to fact and law.

### **FACTUAL HISTORY**

On April 30, 2014 appellant, a 43-year-old sheet metal worker, filed a traumatic injury claim (Form CA-1) alleging injuries to her back and right foot on April 29, 2014 while in the performance of duty. The employing establishment stated that as she was entering Building 207 the door came back, struck her, and knocked her to the floor. It advised that appellant had an appointment with occupational medical services (OMS) so that she could be released back to work with restrictions.<sup>3</sup>

In a report dated May 6, 2014, Dr. Jean-Felix Cyriaque, a Board-certified occupational medicine specialist, advised that appellant was seen for a "nonoccupational illness or injury" and released her to sedentary duties.

In a May 15, 2014 letter, OWCP notified appellant of the deficiencies of her claim and requested a detailed description of the circumstances surrounding the alleged injury. It afforded her 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a May 27, 2014 narrative statement indicating that on April 29, 2014 she fell while returning to work in the OMS facility. She stated that she was opening the right-hand main door while trying to set her cane down when the door came back and slammed into her, knocking her backward toward the cement. Appellant's fiancé, was on her left side carrying her oxygen tank and tried to stop her from falling, but could not do so for fear of dropping the tank. Appellant stated that he managed to lay the tank down and catch her head before it hit the cement, but her lower back landed on the tank and her right ankle was twisted either on the way down to the ground or when the door hit her.

In a statement dated May 5, 2014, appellant's fiancé indicated that he was with appellant on April 29, 2014 when she fell while attempting to enter Building 207. He stated that she opened the right door while he was on her left carrying her oxygen tank. Appellant placed her cane down to open the door. The door swung back and swiped her in the back knocking her backwards out the door. As appellant stumbled back, her fiancé attempted to catch her. He did not want to drop the oxygen tank, but managed to catch her head before it hit the walkway. The fiancé stated that appellant fell on her back and twisted her right foot on the way to the ground, or as she was stumbling back.

In an April 29, 2014 statement, Linda Kujawski, a field registered nurse, indicated that while speaking with appellant "on several occasions [appellant] verbalized anxiety over returning to work." Appellant had on several occasions stated concerns that if she returned to

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<sup>3</sup> The employing establishment completed the Form CA-1 notice of traumatic injury. Appellant submitted a May 27, 2014 statement, noted *infra*, indicating that she was attempting to return to work by attending an appointment at the occupational medicine facility when the claimed injury occurred. The record indicates that appellant had been off work prior to the claimed injury. The record also indicates that appellant filed prior claims for traumatic injuries sustained on June 24, 2004 (File No. xxxxxx599), December 14, 2011 (File No. xxxxxx551), and October 1, 2013 (File No. xxxxxx529). These prior claims are not before the Board on the present appeal.

work she would fall and hurt herself again. Ms. Kujawski encouraged appellant to return to work and use an assistive device and a knee brace if she had concerns about falling.

Medical evidence was also provided. In an April 28, 2014 report, Dr. Maya Hosein, a Board-certified critical care, internal medicine, and pulmonary disease specialist, noted treating appellant for severe chronic obstructive pulmonary disease (COPD) and chronic respiratory failure. She advised that appellant needed to be in a dust-free environment, away from chemicals and fumes, and would have to be in a controlled-temperature environment avoiding heat and humidity.

In reports dated May 5 and 19, 2014, Dr. K. Scott Malone, a physiatrist, diagnosed lumbar sprain and left ankle sprain. He stated that the onset of appellant's symptoms was sudden after an injury at work on April 29, 2014. Appellant reported that she was hit by a door while going into work and fell as a result.

On May 15, 2014 the employing establishment controverted appellant's claim based on the findings of an investigation. A May 12, 2014 report from the employing establishment's FECA Fraud Investigative Unit concluded that the manner in which the injury occurred was not possible and defied the laws of physics. Photographic evidence of the east side main entrance of Building 207 dated May 8, 2014 established that each door measured exactly 43.5 inches wide for a combined doorway width of 87 inches. Each door was exactly 93 inches tall. The doors opened outward toward the parking lot. These doors were manual or pull-type doors with a slow-closing hydraulic door closer attached at the top of each entry door. A test was performed to see how long it would take for the right entry door to close after being opened to the maximum distance that the hydraulic door closer would allow. It took five seconds for the door to completely close during this test. There was very little force exerted from the hydraulic door closer during this test. The hydraulic door closer was designed to slow the force of the weight of the door once it came into contact with an obstructing object. Appellant alleged that she was struck in the ankle, lower leg, and right side of her back by the right-side door as she tried to enter Building 207. The report found that, if this was true, she would have been pushed into the left door or pushed forward, not backward toward the parking lot. There was a rubber and plastic industrial floor mat measuring 72 inches long by 47 inches wide in front of the main doors. This mat was constructed of rigid, yet flexible plastic and rubber designed to shed water and to grip when it was walked on.

A photograph of the door mat showed red-colored boxes marked "L" for left and "R" for right to mark the location of the left and right feet of appellant as she was lying on her back on the concrete when the clinic administrator, Eugene Swinney, arrived at the site on the morning of April 29, 2014. The bottom of her feet were facing toward the entrance doors of Building 207 and her head was toward the parking lot. Another photograph of the door mat included a yellow line to represent the distance from the bottom of the door to the bottom of appellant's left foot after the alleged incident, which measured approximately 65 inches. A red line on the photograph represented the distance from the east side of the door mat to the concrete joint, measuring approximately 13 inches. A blue line on the photograph represented the distance from the bottom of the door to the concrete joint, which measured about 60 inches.

A photograph depicting the right-side door of the main entrance of Building 207 standing open, looking from the inside of Building 207 toward the parking lot, was marked with the position of appellant's body as Mr. Swinney and Paul Pilcher, another OMS employee, found her as they arrived at the incident. The two witnesses stated that she was lying on her back and that the heels of her feet were approximately five inches east of the concrete joint represented by the yellow line. Both witnesses advised that she was lying on top of the longer concrete joint represented by the blue line as if she had been placed in that position. Her cane was lying next to her right leg as if it has been placed on the location represented by the red line. Upon arrival, Mr. Pilcher stated that he observed appellant lying on her back with her feet facing the door approximately five-feet east of the doorway in question. He advised that in his opinion the scene of the alleged fall appeared to be staged due to appellant's point of rest on the ground, the way she was lying, and the distance from the door that had allegedly knocked her down. Mr. Pilcher stated that her body was not in any disarray. The report also included photographs of appellant taken on May 1, 2014 which showed her walking without a cane, walker, or oxygen tanks and driving herself without signs of distress.

By decision dated June 17, 2014, OWCP denied the claim finding that appellant failed to establish that she fell while attempting to enter Building 207 on April 29, 2014, as alleged.

On June 20, 2014 appellant, through counsel, requested an oral hearing before an OWCP hearing representative and submitted hospital records dated April 29, 2014 indicating that emergency personnel responded with lights and sirens to a complaint of a possible fall victim and upon arrival made contact with a 43-year-old female laying on the ground with a portable oxygen tank under her left shoulder, complaining of upper back and right ankle pain. Appellant stated that she was going through the doorway when the door swung toward her causing her to lose her balance, and her fiancé was behind her and prevented her from falling to the ground. She used a cane to assist her with walking due to her bad knee and was on oxygen due to COPD.

In an emergency room report dated April 29, 2014, Stephen Leatherwood, a physician's assistant, asserted that appellant was on workers' compensation and was headed into occupational therapy when she was hit by the door that same day. He diagnosed exacerbation of chronic back pain and right ankle pain. An April 29, 2014 x-ray of the lumbar spine showed degenerative changes at L5-S1. The sacroiliac joints appeared within normal limits and no acute-appearing fracture was seen. An x-ray of the right ankle dated April 29, 2014 demonstrated no evidence of an acute fracture or dislocation.

On May 6, 2014 Dr. Malone reiterated his diagnoses and prescribed a standard wheelchair. On July 2, 2014 he took appellant off of work until reevaluation to occur after one month's time.

A telephonic hearing was held before an OWCP hearing representative on January 15, 2015. Appellant testified that she had entered Building 207 on April 28, 2014, the day before the alleged incident, but was unable to return to work because the employing establishment had not completed her paperwork and told her to return on April 29, 2014. She stated that it was raining on the morning of the 29th as she attempted to enter Building 207, her fiancé was holding her oxygen tank on her left side and her cane was in her right hand when she was going in the door. Appellant testified that she "set [her] cane down but [she] let go of the

door and the door [came] back and smacked her.” She fell backwards, stumbled across a wet mat, and fell onto the pavement with her oxygen tank bracing her back. Appellant’s head did not hit the pavement. After she fell, she testified that her “legs were still laying on the mat but [her] back and [her] head were on the pavement.” Regarding why she fell backwards and not forwards, appellant asserted that the door was very heavy and hit her in the back while she was standing on the “threshold of the door.” Because the door had not completely closed at that time, when it came back and struck her, she fell backwards.

By decision dated March 27, 2015, the hearing representative affirmed the prior decision on the basis that the evidence submitted was not sufficient to establish fact of injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> 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 timely filed within the applicable time limitation period of FECA, that an injury<sup>5</sup> was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. A fact of injury determination is based on two elements. 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 sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that her condition relates to the employment incident.<sup>7</sup>

An employee 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. 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, as alleged, but the employee’s statements must be consistent with surrounding facts and circumstances and her subsequent course of action.<sup>8</sup> An employee has not met her burden of proof to establish the occurrence of an

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> OWCP regulations define a traumatic injury 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. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

<sup>6</sup> *See T.H.*, 59 ECAB 388 (2008). *See also Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *Id.* *See Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *See Joseph H. Surgener*, 42 ECAB 541, 547 (1991); *Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995).

injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. 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 statement in determining whether a *prima facie* case has been established. 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.<sup>9</sup>

The employee must also submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on April 29, 2014, as alleged.

In her May 27, 2014 narrative statement, appellant alleged that she fell on April 29, 2014 while attempting to return to work. During her January 15, 2015 telephonic hearing, she testified that it was raining on the morning of the 29<sup>th</sup> as she attempted to enter Building 207. Appellant's fiancé was holding her oxygen tank on her left-side and she was holding her cane was in her right hand when she was going in the door. Appellant testified that she "set my cane down but I let go of the door and the door come back and smacked her." She fell backwards, stumbled across a wet mat, and fell onto the pavement with her oxygen tank bracing her back. After she fell, appellant testified that her "legs were still laying on the mat but my back and my head were on the pavement." As to why she fell backward and not forward, appellant asserted that the door was very heavy and hit her in the back while she was standing on the "threshold of the door." Because the door had not completely closed at that time, when it came back and struck her, she fell backward.

The employing establishment controverted appellant's claim based on the findings of an investigation. A May 12, 2014 investigative report concluded that the manner in which the injury occurred was not possible and defied the laws of physics. Photographs of the east side of main entrance of Building 207 established that the doors opened outward toward the parking lot. The report found that, if appellant's account of how she fell was accurate, she would have been pushed into the left-side door or pushed forward, not backward toward the parking lot. Two of appellant's fellow employees, Mr. Swinney and Mr. Pilcher, responded to the incident on the morning of April 29, 2014. They both testified that when they arrived at the scene they witnessed the bottom of appellant's feet facing toward the entrance doors of Building 207 and her head towards the parking lot. Mr. Pilcher testified that he witnessed appellant lying on her back with her feet facing the door approximately five-feet east of the doorway in question.

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<sup>9</sup> See *D.B.*, 58 ECAB 529 (2007).

<sup>10</sup> See *J.Z.*, 58 ECAB 529 (2007).

The Board finds that the weight of the evidence establishes that the employment incident of April 29, 2014 did not occur as alleged.<sup>11</sup> Appellant stated that, as she was entering Building 207 on April 29, 2014, she opened the right-side door, set her cane down with her right hand, and then let go of the door which came back, stuck her, and knocked her backward onto the ground. However, the May 12, 2014 investigative report from the employing establishment indicated that it was not physically possible for a manual or pull-type door with a slow-closing hydraulic door closer attached at the top to cause appellant to be pushed in the direction that she claimed. In contrast, the report found that if the door had struck appellant in the manner alleged, then she would not have fallen backward, but forward or into the left-side door. Moreover, witnesses found appellant lying down with her feet approximately five-feet east of the doorway. This position does not support appellant's account of the incident and she failed to provide an adequate explanation as to why her feet were such a significant distance away from the location of her fall. These inconsistencies cast serious doubt on appellant's claim. The Board finds that appellant has failed to provide sufficient factual evidence to establish that she fell at work on April 29, 2014 as alleged.

Since appellant failed to establish the first component of fact of injury, it is not necessary to discuss whether she submitted medical evidence sufficient to establish that a medical condition existed and whether the condition was causally related to the employment factors alleged.<sup>12</sup> Thus, Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on April 29, 2014 as alleged.

On appeal, counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds that counsel's arguments are not substantiated.

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 in the performance of duty on April 29, 2014 as alleged.

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<sup>11</sup> See *A.B.*, Docket No. 14-522 (issued November 9, 2015) (fact of incident not established where there was substantial inconsistency between appellant's account of events and the accounts of coworkers and supervisor with regard to the time and place of his alleged injury); *V.J.*, Docket No. 13-1460 (issued January 7, 2014) (claimed incident not established where employing establishment investigation revealed inconsistencies between appellant's account of the claimed incident and those of coworkers); *J.W.*, Docket No. 12-926 (issued October 1, 2012) (claimed incident not established where there were inconsistencies between appellant's statements and evidence at the scene of the alleged incident).

<sup>12</sup> See *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997). As appellant failed to establish that the claimed event occurred as alleged, it is not necessary to discuss the probative value of medical evidence. *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 27, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 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