

FACTUAL HISTORY

On August 27, 2015 appellant, then a 48-year-old pneudralic mechanic, filed a traumatic injury claim (Form CA-1) alleging that she sustained ankle pain, nerve damage, calf bruising, and a right index finger scrape on September 20, 2013. She alleged that she sustained the injuries when a coworker bumped her on the back of her legs and bumped the back of her shoulder, causing her legs to collapse and her left ankle to twist. The employing establishment controverted the claim arguing that witness statements indicated that appellant's right ankle was hit, as opposed to the left as she indicated. Appellant did not stop work.

In a September 20, 2013 statement, Daniel Wright, appellant's supervisor, advised that appellant reported that a coworker, Ray Inman, bumped into her with his chair, hitting her right foot. He noted that he asked appellant if she was okay and she responded that she was fine, never indicating that she was in any pain. Mr. Wright noted that appellant was very upset when she came to report the incident and indicated that Mr. Inman had been disrespectful toward her.

In a September 20, 2013 statement, appellant related that Mr. Inman hit her shoulder, lower back, arm, and right foot with his chair. She noted that, after asking him if she was in his way, Mr. Inman responded by using profanity and mocking her. Appellant alleged that he told her "this is not Mexico, stop spitting on me and go back to your work bench." She advised that she felt threatened and scared to work around him. Appellant also contended that Mr. Inman bumped into another coworker the day prior without apologizing.

In a September 20, 2013 statement, appellant's coworker, Matt Morgan related witnessing that Mr. Inman accidentally bumped into appellant with his chair. He noted that an argument between appellant and Mr. Inman broke out and appellant told him he would be sorry.

In a September 23, 2013 statement, Mr. Inman noted that appellant informed him that he bumped into her with his chair. He contended that he had just moved his chair from the arbor press to his work bench and was unaware of any contact between appellant and his chair. Mr. Inman noted that he and appellant got into a confrontation because she believed he was making fun of her. In a September 25, 2013 addendum, he advised that appellant told him "you'll be sorry" at the end of their conversation.

By letter dated September 2, 2015, OWCP advised appellant that the employing establishment controverted her claim. It advised of the type of evidence needed to establish the claim and instructed her to complete a questionnaire within 30 days from the date of the letter.

OWCP, in a second letter dated September 2, 2015, requested comment from a knowledgeable supervisor regarding whether appellant was engaged in official duties at the time of the injury.

By letter dated September 14, 2015, the employing establishment again controverted appellant's claim, as no medical evidence was submitted.

In a July 14, 2015 report, Dr. Noah Kolb, a Board-certified neurologist, advised that appellant was being treated for bilateral peroneal neuropathy and left ankle pain. He noted that appellant dislocated her left ankle in 2008, underwent surgical repair in 2010, and sustained a

work-related injury to her lower legs in September 2013. Dr. Kolb explained that a chair hit the back of appellant's legs at work causing traumatic injury to her proximal peroneal and tibial nerves. He advised that a July 2014 electromyography (EMG) showed evidence of resolving bilateral peroneal neuropathy. On examination Dr. Kolb noted decreased range of motion in the left ankle with plantar and dorsiflexion, decreased vibration on the right lower extremity worst in the toe, weakness in the left ankle, and normal gait. He assessed lower extremity pain, resolving weakness, and traumatic injury to the proximal peroneal and tibial nerve. Dr. Kolb attributed her condition to the 2013 incident.

Appellant returned a signed questionnaire dated September 17, 2015, but provided no answers to the questions posed.

In a September 22, 2015 response to OWCP's inquiry, the employing establishment noted that appellant was engaged in her official duties at the time the alleged injury occurred. The employing establishment reiterated that appellant was now claiming a left ankle injury, but she first reported that the incident involved her right ankle. It also noted that appellant did not claim an injury until two years following the incident.

By decision dated October 8, 2015, OWCP denied appellant's claim because the evidence of record did not support that the injury occurred as described.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of reliable, probative, and substantial evidence,³ including that he is an "employee" within the meaning of FECA and that he filed his claim within the applicable time limitation.⁴ 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.⁵

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.⁶

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.⁷

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

⁴ *R.C.*, 59 ECAB 427 (2008).

⁵ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *T.H.*, 59 ECAB 388 (2008).

⁷ *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

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.⁸

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish an injury in the performance of duty on September 20, 2013 because the record does not support that the event occurred as she described. By letter dated September 2, 2015, OWCP informed appellant of the type of evidence needed to support her claim that she injured her ankle, calf, and right index finger. This was to include an explanation of the immediate effects of the injury, initial treatment information, information regarding any preexisting conditions, and an explanation of witness statements that indicated that her right ankle was hit, as opposed to her left, as she initially claimed. Appellant did not respond as requested by OWCP.

In her September 2, 2015 traumatic injury claim (Form CA-1), appellant indicated that both her legs were hit causing her left ankle to twist. However, in her September 20, 2013 statement, she indicated that her right foot was hit by the chair and never mentioned her left ankle twisting. Furthermore, when appellant initially reported the incident to her supervisor she indicated that she was "fine." In fact, it took appellant two years to report an injury and the only medical report of record is from July 14, 2015. The inconsistency between appellant's initial statement and the account that she provided on her notice of traumatic injury (Form CA-1), together with her failure to complete OWCP's questionnaire and submit contemporaneous medical reports, casts serious doubt on her statement that she sustained an injury as alleged on September 20, 2013.

The Board therefore concludes that appellant did not establish a traumatic injury in the performance of duty on September 20, 2013 because she did not submit sufficient evidence to establish that she actually experienced an employment incident that caused her medical conditions. Where a claimant does not establish an employment incident alleged to have caused his or her injury, it is not necessary to consider the medical evidence.⁹

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.

⁸ *Betty J. Smith*, 54 ECAB 174 (2002).

⁹ *S.P.*, 59 ECAB 184 (2007).

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing an injury in the performance of duty on September 20, 2013.

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 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