United States Department of Labor
Employees' Compensation Appeals Board

H.D., Appellant	)	
and	)	**Docket No. 15-1698**
	)	**Issued: May 4, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Oklahoma City, OK, 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 August 7, 2015 appellant filed a timely appeal from a May 19, 2015 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 has established an injury in the performance of duty on June 28, 2014.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant timely requested oral argument pursuant to section 501.5(6) of the Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). By order dated December 29, 2015, the Board denied the request, finding that the appeal could be adequately addressed by review of the case record. *Order Denying Request for Oral Argument*, Docket No. 15-1698 (issued December 29, 2015). The Board further notes that, on appeal, appellant submitted a new medical diagnostic report. The Board, however, can review only evidence that was before OWCP at the time of the final decision on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On July 1, 2014 appellant, then a 37-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries to her right knee, ankle, and foot in the performance of duty on June 28, 2014. On the claim form she asserted that she was standing at the sorting case and, when she went to sit down, her right side was numb and she fell back, twisting her right knee, ankle, and foot. The reverse of the claim form indicates that appellant stopped working two days later on June 30, 2014.

Appellant submitted a statement dated June 29, 2014, alleging that she was facing the sorting case, fixing labels, when her back began to hurt and she turned to sit down. She did not notice that her right leg was numb and she tripped and fell backward, twisting her right knee, ankle, and foot.

The record indicates that appellant was treated on June 29, 2014 by a physician assistant at a hospital emergency room. In a report of that date, the physician assistant provided a history that she had tripped over her feet at work and presented with right ankle and right knee pain. The report indicated that appellant did not hit her head.

In a report dated June 30, 2014, Dr. J. Arden Blough, a Board-certified family practitioner, provided a history that appellant had an ongoing work-related injury to her low back that occasionally caused numbness in the legs.[3] He reported that, on June 28, 2014 appellant's right leg went numb, she fell and twisted her right knee and ankle. Dr. Blough provided results on examination and diagnosed "consequential injury" resulting in right knee sprain/strain, right knee medial meniscus tear, and right ankle sprain/strain.

By letter dated July 28, 2014, OWCP advised appellant that the evidence of record was insufficient to establish an employment incident or injury. According to OWCP, the employing establishment was challenging continuation of pay, stating that she had not completed eight hours in the last month and was now claiming an injury.[4] OWCP requested information from appellant regarding any similar disability or symptoms before the injury.

On August 14, 2014 appellant submitted a claim for compensation (Form CA-7) for disability commencing August 14, 2014. In an August 12, 2014 note, Dr. Blough reported that she was totally disabled from July 9 to August 26, 2014.

By decision dated August 29, 2014, OWCP denied appellant's claim. It found that appellant had not established an employment incident as alleged, nor had she submitted rationalized medical evidence.

Appellant timely requested a hearing before an OWCP hearing representative on September 22, 2014. She submitted a July 29, 2014 report from Dr. Blough, who indicated that

[3] The record indicates that appellant had prior traumatic injury claims from February 26, 2004 to August 10, 2013.

[4] The case record does not contain evidence from the employing establishment as of July 28, 2014 controverting the claim for compensation.

she had continuing pain in the right knee and ankle. Dr. Blough provided results on examination and diagnosed acute traumatic injury resulting in lumbar spine sprain/strain with trigger point formation; acute traumatic injury resulting in lumbar spine degenerative disc disease; consequential injury resulting in right knee sprain/strain; and consequential injury resulting in right ankle sprain/strain. He opined that appellant remained totally disabled through August 12, 2014.

A hearing before an OWCP hearing representative was held on March 11, 2015. At the hearing, appellant described the June 28, 2014 incident in additional detail. She indicated that, when she fell, she fell onto the "skids" that were hip high and caused her to twist her knee.

On April 22, 2014 the employing establishment submitted an April 29, 2014 letter advising appellant that he would be suspended for failure to maintain regular attendance. According to an employing establishment e-mail dated April 21, 2015, appellant had not worked a full pay period since February 2013 and had claimed three injuries. The employing establishment indicated that, on June 28, 2014 she was on light duty, there were no witnesses to the alleged incident, and she had not previously alleged that she fell on skids. According to the e-mail, appellant had moved to Fort Worth, Texas and was applying for jobs there.

By decision dated May 19, 2015, the hearing representative affirmed the August 29, 2015 decision. The hearing representative found that there remained an "unexplained discrepancy" as to how the injury occurred, noting that appellant had not discussed falling onto skids in her initial statements, that she had stated that her knee was black and blue after the incident, but hospital reports did not mention any bruising or contusions. In addition, the hearing representative found that appellant had not refuted the employing establishment's claim that she had moved 200 miles to Fort Worth and was applying for jobs in that area.

LEGAL PRECEDENT

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[5] The phrase "sustained while in the performance of duty" in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of an in the course of employment."[6] An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.[7] In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident

[5] 5 U.S.C. § 8102(a).

[6] *Valerie C. Boward*, 50 ECAB 126 (1998).

[7] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993).

which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[8]

With respect to the first component of fact of injury, the 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.[9] 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, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action.[10] An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[11] 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 statements in determining whether a *prima facie* case has been established.[12]

ANALYSIS

In the present case, appellant filed a traumatic injury claim alleging injuries on June 28, 2014 when she tripped and twisted her right knee and ankle. OWCP denied the claim finding that an employment incident had not been established. The Board concurs with this finding.

Appellant's description of the incident has been inconsistent with respect to the specific circumstances and mechanism of injury. She initially reported on the CA-1 that she was standing at the sorting case and twisted her right knee, ankle, and foot. The history given on June 29, 2014 at the hospital was that she tripped over her feet. At the March 11, 2015 hearing, appellant alleged that she tripped and fell onto hip-high skids.

These inconsistencies cast doubt on the validity of the claim. Appellant did not provide a clear and consistent description of the alleged employment incident and the mechanism by which she sustained an injury.[13] As noted above, it is appellant's burden of proof to establish fact of injury, and this includes establishing the occurrence of an employment incident as alleged on June 28, 2014. The Board finds appellant did not establish the first component of fact of injury. Accordingly, OWCP properly denied her claim for compensation in this case.

[8] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[9] *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

[10] *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

[11] *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[12] *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

[13] *See L.W.*, Docket No. 15-1191 (issued September 8, 2015) (an incident not established where appellant provided a vague description that failed to elucidate the mechanism of injury or clarify how the injury occurred).

On appeal, appellant indicates that she had an MRI scan of her right knee that agreed with the findings of Dr. Blough, and she had surgery in July 2015. As discussed above, the Board finds the claim was properly denied because the occurrence of an employment incident as alleged has not been established. Medical evidence is not probative relative to finding incident.

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 established an employment incident on June 28, 2014, and OWCP properly denied the claim for compensation.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 19, 2015 is affirmed.

Issued: May 4, 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