



(DBCS) machine, causing her to fall and strike her right elbow. She noted that the pain in her right elbow had increased over time and was now constant. Appellant's supervisor noted on the claim form that appellant first reported the elbow condition on June 16, 2014.

In an undated statement, received with the Form CA-2, appellant indicated that her elbow was injured in June 2014 and the pain went away. However, the pain returned during the past few months.

In a June 16, 2014 emergency room report, Dr. John J. Zecherie<sup>2</sup> indicated that appellant was seen on that day for contusion of the right elbow. He related that x-ray of the right elbow was within normal limits. Dr. Zecherie noted probable bruise to bone and no fracture. Information sheets on upper extremity contusion were provided.

OWCP received a June 18, 2014 witness statement, wherein Geraldine O. Jayme stated that she was in front of the DB #2 waiting for the machine to be done so she could help dispatch. Ms. Jayme indicated that the steps of the machine were down in order to allow someone to sweep the top portion of the machine. "I was in the front of the machine when I noticed somebody fall from behind me. I saw them from my peripheral vision. I thought she had fainted from the heat. She was on the ground for about a minute. She seemed delirious...."

Another undated witness statement, with a facsimile date of August 17, 2015 and an illegible signature, was received by OWCP which noted that "[appellant] was in front of me when she went down. Saw [appellant] falling backwards, saw her hit elbow on cement floor. Jim help pull me up after a few minutes."

By letter dated August 24, 2015, OWCP advised appellant that additional factual and medical evidence were needed regarding her occupational disease claim. It acknowledged her description of the injury, but advised that clarification was needed as to the type of injury she was claiming. OWCP noted that appellant's personal statement, as well as the submitted witness statements appeared to apply to a June 16, 2015 fall at work,<sup>3</sup> which appeared to be a traumatic injury. Appellant was advised of the definitions of a traumatic injury and occupational disease and asked to clarify what type of injury she was claiming. She was asked to provide all medical reports relevant to treatment she received for this injury and to confirm the date of injury for this claim. Appellant was also asked to provide further factual information if the date of injury was June 16, 2014 and she was provided a list of questions to address. She was also advised that she should provide medical evidence from her physician which included a history of injury and a medically reasoned opinion on the relationship between the work injury and her diagnosed condition.

In a September 20, 2015 letter to OWCP, appellant listed the date of injury as "March 29, 201 (sic)." She stated that she went to help a fellow employee pull down the machine and dispatch the mail. Appellant walked up to the stacker to sweep, but the bottom step on the

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<sup>2</sup> Dr. Zecherie's medical credentials could not be verified.

<sup>3</sup> OWCP made a typographical error as to the date of appellant's fall as it should be June 16, 2014 as opposed to June 16, 2015.

machine was down. She turned to sweep the stackers and then fell backwards, hitting her right elbow on the cement floor. Appellant alleged that since that date her right elbow has been swollen. She indicated that all medical reports had been sent.

By decision dated September 24, 2015, OWCP considered the claim a traumatic injury claim but denied the claim as the factual component had not been established. It specifically found that she had not established that the event occurred as alleged.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish 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, that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>5</sup>

OWCP regulations at 20 C.F.R. § 10.5(ee) 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.<sup>6</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>7</sup>

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 which is alleged to have occurred. 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.<sup>8</sup> 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. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent

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<sup>4</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>5</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>7</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>8</sup> *Charles B. Ward*, 38 ECAB 667 (1987).

difficulty following the alleged injury, and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether she has established a *prima facie* case.<sup>9</sup> However, 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>10</sup>

### ANALYSIS

Appellant filed an occupational disease claim on August 17, 2015 and alleged that on June 16, 2014 she had fallen on the bottom step of a stacker, causing injury to her right elbow. While she did not initially identify the date of injury on her claim form, her supervisor noted on the form that appellant reported this injury on June 16, 2014. OWCP acknowledged that from appellant's description of the events and witness statements, she had described a June 16, 2014 work incident. It denied the claim, however, finding that she had not established that the incident had occurred as described as the mechanism of injury remained unclear.

On her claim form, received by OWCP over a year after the incident, on August 17, 2015, appellant stated that she fell and struck her elbow when the cuff of her pants caught on the lower step of the stacker machine. On August 24, 2015 OWCP informed appellant that additional factual evidence was needed as well as clarification as to whether this was a traumatic injury or an occupational disease claim. Appellant was provided an opportunity to clarify the details of her claimed injury.

In her September 20, 2015 response, appellant described the events of June 16, 2014. She indicated that the bottom step of the stacker machine was down and, as she turned to sweep the stacker, she fell backward, striking her right elbow on the cement floor. While appellant mentioned that the bottom step of the stacker machine was down, she did not clearly assert how the step being down resulted in a fall. She did not mention anything about the cuff of her pants being caught on the bottom step.

The witness statements of record are vague as to date and time of the alleged incident and there is conflicting evidence surrounding the events of that date. One witness suggested that appellant may have fainted, another confused the fact as to who had fallen, and there is also some suggestion of a prior elbow injury. The June 16, 2014 emergency room report also does not contain a description of the injury or how appellant sustained a contusion of the right elbow. The Board finds that given the confusion as to the actual date of the incident, the length of time from the date of the injury, and the claim for compensation the fact that the date and time of incident were not verified by the witness statements and the inconsistencies in the description of the incident, appellant has failed to provide sufficient factual and medical evidence to establish a *prima facie* claim.<sup>11</sup>

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<sup>9</sup> *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>10</sup> *Thelma S. Buffington*, 34 ECAB 104 (1982).

<sup>11</sup> *M.F.*, Docket No. 10-1514 (issued March 11, 2011); *see O.W.*, Docket No. 09-2110 (issued April 22, 2010). *See also id.*

As appellant did not establish that an incident occurred, it is not necessary to consider the medical evidence with regard to causal relationship.<sup>12</sup>

**CONCLUSION**

The Board finds that appellant failed to establish a right elbow condition on June 16, 2014 in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 24, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 19, 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

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<sup>12</sup> *Id.*