United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
	)	**Docket No. 16-0286**
and	)	**Issued: May 11, 2016**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Royal Oak, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
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 December 2, 2015 appellant, through counsel, filed a timely appeal from a July 2, 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a head injury on August 11, 2014 while in the performance of duty.

On appeal, counsel contends that OWCP's decision is contrary to fact and law.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 13, 2014 appellant, then a 45-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 11, 2014 she sustained a head injury at work when she hit her head on her vehicle as water threw her around.

On the Form CA-1 signed by Michael Quire, a supervisor, and by letter dated August 20, 2014 and signed by Gail Hawkins, an employing establishment human resources manager, controverted the claim, contending that appellant did not submit any medical evidence to establish that her claimed injury was caused or aggravated by specific employment factors. They also contended that she did not previously mention her injury.

The employing establishment provided a timeline of events that occurred on August 11, 2014. At 3:30 p.m. appellant called the station and stated that she needed lunch and had six loops to finish. At 5:20 p.m. she reported to Demaris C. McCants, a closing supervisor, that, she had to finish two loops. At 5:30 p.m. appellant went to get mail, but advised that it was getting flooded and that "11 mile was flooded." Between 6:30 p.m. and 8:00 p.m. she called Mr. Quire. At 6:00 p.m. Mr. Quire followed appellant out to her route which was not flooded. At 6:30 p.m. appellant's loop was completed. Mr. Quire told her that she had approximately 30 minutes to deliver and she should return to the station at approximately 7:30 p.m. At 6:34 p.m. he told appellant to call Mr. McCants if she had any further problems. At 6:45 p.m. Mr. McCants started calling her to come back to the office. Appellant did not respond. Mr. McCants attempted to call her at least three times until 7:00 p.m. Between 7:15 p.m. and 7:30 p.m. appellant called back to the office, relating that her vehicle would not start and that a customer was trying to help her. She did not mention that the vehicle was flooded. Mr. McCants then called the vehicle maintenance facility (VMF). Between 7:30 p.m. and 8:30 p.m. he continued to call appellant for updates and to let her know that an employee from VMF was on the way to help. A VMF employee picked up appellant. Mr. McCants called appellant and instructed her to bring the mail back to the office. Appellant responded that she could not do so and sent a picture of her vehicle submersed in water. Mr. McCants heard the VMF employee say that if appellant opened the door then water would rush into the vehicle. Appellant returned to the office at 9:06 p.m. Mr. McCants asked her a few questions and she did not respond. Appellant did not state at any time that she had an accident or was injured. On August 12, 2014 she called in sick. Appellant did not report any injury until August 13, 2014 after carrying out her entire route. She requested a Form CA-1 and was instructed to write a statement.

The employing establishment provided appellant with an authorization for examination and/or treatment (Form CA-16) on August 13, 2014 which was signed by Mr. Quire.

By letter dated August 22, 2014, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit medical evidence and additional factual evidence.

In an undated narrative statement, appellant described the alleged August 11, 2014 incident. She related that at approximately 4:00 p.m. she called Mr. McCants to explain that she did not feel safe to continue delivering mail under the weather conditions at that time. It was thundering and lighting and appellant was standing in one foot of water. Mr. McCants instructed

her to deliver all of her mail. Appellant was told to get off the street by a police officer due to a flash flood warning advisory. She completed her loop and returned to her van. Appellant attempted to deliver her next loop, but was prevented from doing so by the rain storm. She returned to her van and drove back to the station. Appellant arrived at the station at approximately 5:15 p.m. and Mr. McCants ordered her to deliver her remaining two and one-half loops. She refused for safety reasons. Pam Rambo, an employee, related that she did not believe appellant's story so she sent Mr. Quire out with appellant to verify her story and to access the situation. Mr. Quire watched appellant wade through knee high water as she delivered her loop. He gave her a map and told her to deliver the other two loops and not return to the station until she was finished. Mr. Quire told appellant that she should be done by 7:30 p.m. and then he drove away. Appellant delivered the two loops, but around 7:15 p.m. she still had packages to deliver. She could not drive to the address because water was up to her thighs. Appellant was walking to deliver the packages when she saw an employee wading down the street towards her. He told her to come back in and apologized because she should not have been sent back out. Appellant returned to her van and tried to drive away, but the water rose so high and fast that the vehicle stalled and filled up fast with water. She used a tub to push open the van door and as water rushed into the van she lost her balance and fell underneath the water. Appellant hit her head against the van while flinging her arms to regain her balance. She also hit her wrist against something hard.

In an August 14, 2014 medical report, Dr. Ashok K. Gupta, a Board-certified internist, opined that appellant should be excused from work through August 18, 2014. He advised that she could return to work on August 19, 2014.

An August 13, 2014 report from Henry Ford Farlane Emergency Department, Dr. Christopher D'Angelo, a Board-certified internist, noted diagnoses of headache, cervical strain, and wrist strain. The report also addressed appellant's medications.

In an August 18, 2014 report, Dr. Saima Khan, a Board-certified internist, evaluated appellant for a headache. He provided care instructions for her postconcussion syndrome. In an August 18, 2014 letter, Dr. Khan opined that appellant should be off work through September 1, 2014. Appellant could return to work on September 2, 2014 with no restrictions. A September 3, 2014 duty status report (Form CA-17) from Dr. Khan provided a history of injury that on August 11, 2014 she bumped the back of her head on a vehicle. He reiterated his diagnosis of headache (postconcussion syndrome). Dr. Khan advised that appellant could not work at that time.

In an August 26, 2014 letter, Anthony Redmond, a licensed master social worker, and Roshundra Graham, a licensed social worker and a counsel, noted that appellant was under their care for post-traumatic stress disorder (PTSD) and major depressive disorder. Mr. Redmond and Ms. Graham provided appellant's reactions to being trapped in a storm and flood, which caused major problems with her ability to function and make sound decisions during her daily routine. Appellant was found to be unable to return to work until further evaluation.

By decision dated September 23, 2014, OWCP accepted that the August 11, 2014 incident occurred as alleged. However, it denied appellant's traumatic injury claim as it did not

receive medical evidence from a physician that contained a medical diagnosis causally related to the accepted employment incident.

Appellant submitted an illegible statement regarding the alleged August 11, 2014 incident.

In a September 25, 2014 letter, Dr. Leon M. Rubenfaer, a Board-certified psychiatrist, noted that appellant had been under his care for a serious medical condition. He further noted that she had been totally disabled since August 11, 2014. Dr. Rubenfaer advised that appellant could return to work on November 3, 2014 with no restrictions. In an October 1, 2014 attending physician's report (Form CA-20), he provided a history that on August 11, 2014 her mail truck was caught in a flood and she was almost killed. Dr. Rubenfaer provided findings and diagnosed PTSD. He indicated with a checkmark "yes" that the diagnosed condition was caused or aggravated by work activity. Dr. Rubenfaer opinioned that appellant was injured while on the job. He advised that she had been totally disabled from August 11, 2014 through the date of his examination. Dr. Rubenfaer concluded that appellant could return to work on November 3, 2014 without restrictions.

In an October 8, 2014 Form CA-20 report, Dr. Khan provided a history that on August 11, 2014 appellant sustained a head injury when her van flooded and she slipped and hit her head. He provided examination findings and diagnosed PTSD, mixed headache with components of occipital neuralgia, and rebound headache. Dr. Khan also provided an illegible diagnosis. He indicated with a checkmark "yes" that the diagnosed conditions were caused or aggravated by an employment activity, noting appellant's slip and fall in a van on August 11, 2014. Dr. Khan advised that she was totally disabled from August 13 to September 1, 2014. Appellant could return to work on September 2, 2014.

On October 13, 2014 appellant requested an oral hearing held before an OWCP hearing representative regarding OWCP's September 23, 2014 decision.

In letters dated September 22 and November 25, 2014, Dr. Rubenfaer again noted that appellant was under his care for a serious medical condition and that she had been totally disabled since August 11, 2014. He released her to return work on November 3, 2014 and February 1, 2015 without restrictions.

In an undated narrative statement, Mr. McCants responded to appellant's account of the injury. He related that she called the office at 3:30 p.m. and stated that she had loops to deliver and lunch to take. Mr. McCants told appellant to take lunch. Appellant did not mention that the weather was affecting her job or that she felt unsafe. She returned to the office between 5:20 p.m. and 5:30 p.m. and related that she had two more loops to deliver. Mr. McCants responded that appellant may have to return to her route. Appellant became angry and stated that it was raining. Mr. McCants asked Mr. Quire to go with her to complete the loops. They left at 5:50 p.m. At 6:45 p.m. Mr. McCants was instructed to call appellant to tell her to return to the station. He called her three times, but she did not answer. Mr. McCants left appellant a message on the third attempt. Appellant returned Mr. McCants' call at 7:15 p.m. and related that her vehicle would not start and that customers tried to start it. Mr. McCants dispatched assistance from the VMF. He asked appellant if she was okay and she did not indicate that she was in

danger. Mr. McCants heard customers in the background talking and laughing. At 8:30 p.m. appellant was picked up by a VMF employee. Mr. McCants asked her to retrieve the mail from the van. Appellant responded that she could not get the mail because water would rush into the vehicle. She sent Mr. McCants a picture of the vehicle in water. Appellant returned to the office at 9:00 p.m. She was dry and talking on her cellphone. Mr. McCants took appellant's keys and said good night. Appellant did not inform him that she had been in any trouble or felt unsafe.

In a December 23, 2014 letter, the employing establishment removed appellant from employment, effective January 23, 2015 for failure to adhere to attendance regulations. Appellant was absent without official leave from October 27 to November 13, 2014.

During a telephone hearing held on April 28, 2014, appellant again described the August 11, 2014 incident. She related that she feared for her physical safety when water was up to her hips and over the door of her van. Appellant stated that the VMF employee was not present at the time of her injury, but many customers were present as their basements and houses had flooded. She indicated that she would obtain a statement from them regarding the incident. Appellant maintained that she hit the back of her head when she went under water. She tried to drive her vehicle past water, but it stalled and filled with water. Appellant tried to exit the vehicle, but the power doors locked, the windows would not come down, and water quickly filled the vehicle. She feared not being able to see her daughters graduate from school. Appellant advised that she used a tub to push the van door open. Water rushed into the vehicle and she lost her balance while getting out of it. She floated down the street when two men pulled her out of the water. Counsel stated that appellant reported that a customer took her in and gave her a set of dry clothes while she waited for help.

In a July 2, 2015 decision, an OWCP hearing representative affirmed the September 23, 2014 decision as modified, finding that the August 11, 2014 incident did not occur as alleged. She found that appellant provided an inconsistent history of injury and failed to submit any objective evidence of trauma such as, witness statements.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 filed within 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.[2] 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.[3]

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

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton, id.*

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 evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[4]

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.[5] 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 his subsequent course of action. An employee has not met his or 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.[6]

ANALYSIS

Appellant alleged that on August 11, 2014 she sustained a head injury as she fell while escaping her water-filled van while in the performance of duty. However, the Board finds that there are inconsistencies in the evidence which cast serious doubt upon the validity of the claim, and thus, the claimed employment incident did not occur as alleged.

The case record contains differing statements regarding how appellant's alleged head injury occurred. Appellant claimed that she was instructed to return to her route to finish delivering mail on her loops by Mr. McCants despite a rainstorm that included thunder and lighting. She further claimed that Mr. Quire watched her wade through knee-high water as she delivered her loop. Appellant maintained that after delivering her loops and being advised by a coworker to return to the station due to the rain, she returned to her van and attempted to drive back to the station. She contended that her vehicle stalled and filled up fast with water. Appellant further contended that she had to use a tub to open a van door to escape because the power doors locked and the windows would not roll down. She related that water rushed into the van and she lost her balance and fell underneath the water, causing her to hit her head and wrist. Appellant claimed that two men pulled her out of the water and that a customer gave her dry clothes to change into while she waited for help to arrive.

However, Mr. McCants maintained that appellant told him that she was fine and did not indicate that she was in any danger when she called him stating that her vehicle would not start and that customers unsuccessfully tried to start it. He further maintained that he heard customers in the background talking and laughing. Mr. McCants noted that after a VMF employee had picked up appellant from her loop, he asked her to retrieve the mail from the van. He related that she responded no. Mr. McCants heard the VMF employee state that water would rush into the

[4] *T.H.*, 59 ECAB 388 (2008).

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

[6] *Betty J. Smith*, 54 ECAB 174 (2002).

vehicle if appellant retrieved the mail. He noted that when she returned to the station, she was dry and talking on her cellphone. Appellant did not inform Mr. McCants that she had been in any trouble or felt unsafe on her route. Mr. Quire maintained that her route was not flooded on August 11, 2014. The Board finds that the statements of Mr. McCants and Mr. Quire are contrary to appellant's allegation that she was overcome with water inside her flooded van on August 11, 2014.

There also are no contemporaneous statements from witnesses present on appellant's route supporting that the August 11, 2014 incident occurred as alleged. While an injury does not have to be confirmed by eyewitnesses to establish that an employee sustained an injury in the performance of duty, the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action. Appellant claimed that customers witnessed the August 11, 2014 incident, but she did not submit any statements from these witnesses. Further, she did not submit any witness statements from the men who pulled her out of the water.

For these reasons, the Board finds that appellant has not established that the incident occurred as alleged. Because appellant has not established that the August 11, 2014 incident occurred, it is not necessary for the Board to consider the medical evidence.[7]

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

The Board notes that OWCP has not adjudicated the issue of her possible entitlement to incurred medical expenses. The employing establishment provided appellant with a Form CA-16 on August 13, 2014 that was signed by Mr. Quire. Ordinarily, the employing establishment will authorize treatment of a job-related injury by providing him or her, a properly executed Form CA-16 within four hours.[8] Under section 8103 of FECA, OWCP has broad discretionary authority to approve unauthorized medical care which it finds necessary and reasonable in cases of emergency or other unusual circumstances, to be determined on a case-by-case basis.[9] In denying appellant's claim for a traumatic injury, OWCP did not consider whether emergency circumstances or unusual circumstances were present or whether this was a situation in which reimbursement of medical expenses was appropriate.[10]

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.

[7] *B.W.*, Docket No. 13-244 (issued May 13, 2013).

[8] *See Val D. Wynn*, 40 ECAB 666 (1989); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (February 2012).

[9] 5 U.S.C. § 8103; 20 C.F.R. § 10.304. *See L.B.*, Docket No. 10-469 (issued June 2, 2010); *see also* Federal (FECA) Procedure Manual, *id.* at Chapter 3.300.3(a)(3).

[10] *K.G.*, Docket No. 10-1806 (issued April 5, 2011).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a head injury on August 11, 2014 while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the July 2, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 11, 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