

**United States Department of Labor
Employees' Compensation Appeals Board**

C.E., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Edison, NJ, Employer)

**Docket No. 17-0106
Issued: April 20, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 25, 2016 appellant filed a timely appeal from an April 28, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 met her burden of proof to establish an injury in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence after OWCP rendered its April 28, 2016 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision and therefore this additional evidence cannot be considered on appeal. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

FACTUAL HISTORY

On March 1, 2016 appellant, then a 53-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that at 3:55 p.m., on January 11, 2016, she fell on an entry step while carrying a heavy package into a building and hit her head on the wall. She indicated that the injury occurred at 448 Washington Road, first floor. Appellant reported sustaining a cut on the top of her head which required two stitches. She first received medical care on January 11, 2016 and notified her supervisor on March 10, 2016. Appellant did not stop work following her injury. On the reverse side of the form, appellant's supervisor controverted the claim noting that the injury was reported more than 30 days after the incident occurred.

By letter dated March 17, 2016, OWCP informed appellant that the evidence of record was insufficient to support her claim. It informed her that the evidence was insufficient to establish that she actually experienced the incident or employment factor alleged to have caused injury, that there was no diagnosis of any condition, nor was there a physician's opinion as to the cause of her injury. Appellant was advised of the factual and medical evidence needed to support her claim and was afforded 30 days to submit the necessary evidence. OWCP also provided a questionnaire for completion and requested that she submit a response in order to substantiate the factual basis of her claim. Appellant did not respond or complete the development questionnaire.

In support of her claim, appellant submitted a January 11, 2016 Raritan Bay Medical Center Emergency Department report documenting her treatment on that date. No history of injury was related in this report. Laceration of the scalp was diagnosed. The report noted that appellant was treated for a single repair laceration by Dr. Santiago Muzones, Board-certified in internal medicine. Additionally, discharge instructions were provided for staple removal.

By decision dated April 28, 2016, OWCP denied appellant's claim, finding that the evidence of record failed to establish that the January 11, 2016 employment incident occurred as alleged. It noted that she failed to respond to the questionnaire that was sent with the March 17, 2016 development letter. OWCP concluded that appellant failed to establish an injury in the performance of duty.

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 or specific condition for which compensation is claimed are causally related to the employment injury.³ 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.⁴

³ *Gary J. Watling*, 52 ECAB 278 (2001).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

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 which is alleged to have occurred.⁵ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he or she sustained an injury in the performance of duty the employee must submit sufficient evidence to establish that she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. She must also establish that such event, incident, or exposure caused an injury.⁶ Once the employee establishes that she sustained an injury in the performance of duty, she has the burden of proof to establish that any subsequent medical condition or disability for work, for which she claims compensation is causally related to the accepted injury.⁷

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met her burden of proof when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁸

ANALYSIS

The Board finds that appellant failed to establish that she sustained a scalp laceration on January 11, 2016 at the time, place, and in the manner alleged.⁹ Appellant has therefore not established an injury in the performance of duty.

Appellant must establish all of the elements of her claim in order to prevail. She has provided insufficient detail to establish that a traumatic incident occurred as alleged.¹⁰ On her claim form, appellant alleged that she sustained a cut on her head when she fell on an entry step while carrying a heavy package and hit her head on a wall. She did provide the time and place of the alleged injury. The Board notes however that appellant's description of the traumatic

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

⁶ See generally *John J. Carlone*, 41 ECAB 354 (1989); see also 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). See *Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

⁷ *Supra* note 3.

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

⁹ *J.L.*, Docket No. 16-1114 (issued October 25, 2016).

¹⁰ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

incident is vague and fails to provide any specific detail to determine the manner in which she sustained her injury. Appellant's description did not relate with specificity the circumstances of the injury, or identify the actual cause.¹¹ She provided no explanation as to why she fell, for example if she tripped, slipped, or fell due to weakness of a lower extremity. While appellant sought medical treatment on January 11, 2016 at the Raritan Bay Medical Center Emergency Department, this report is also insufficient to establish fact of injury. This medical report did not relate a history of injury. Therefore, while this document has some connection to appellant's claim, it is of limited probative value as it offers no further evidence that the incident occurred as alleged.¹² Appellant's supervisor controverted the claim indicating that appellant failed to report the incident for more than 30 days after the alleged January 11, 2016 date of injury.

Appellant was provided an opportunity to establish how her alleged injury occurred on January 11, 2016. By letter dated March 17, 2016, OWCP requested she describe the factual circumstances of her injury and provided her with a questionnaire for completion. Appellant did not respond to the questionnaire and failed to provide a narrative statement detailing the traumatic incident. The only explanation provided pertaining to the January 11, 2016 traumatic incident was the generalized and vague statement noted in her Form CA-1. By failing to describe the employment incident and circumstances surrounding her alleged injury, appellant has not established that the traumatic injury occurred as alleged.¹³

On appeal, appellant argues that her January 11, 2016 injury was work related and described the details surrounding the alleged employment incident. As previously noted, the Board does not have jurisdiction over the merits of the claim.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an injury in the performance of duty on January 11, 2016.

¹¹ *T.N.*, Docket No. 16-1099 (issued December 16, 2016).

¹² *David J. McDonald*, 50 ECAB 185 (1990).

¹³ *P.T.*, Docket No. 14-598 (issued August 5, 2014).

ORDER

IT IS HEREBY ORDERED THAT the April 28, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board