

FACTUAL HISTORY

On May 20, 2016 appellant, then a 28-year-old part-time flexible clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained a work-related injury at 4:20 a.m. on May 20, 2016. She claimed that she sustained stress to her nervous system and noted regarding the cause of the injury, “Man standing on the west side of the building.” Appellant stopped work on May 20, 2016 and returned to work on May 21, 2016.

On the same Form CA-1, appellant’s immediate supervisor indicated that appellant’s regular work schedule was 4:00 a.m. to 6:00 a.m. “as scheduled daily.” The supervisor indicated that appellant was not injured in the performance of duty and noted that the alleged injury occurred when appellant pulled into the parking lot and she was not on the clock. Additionally, she noted that appellant was unhappy with working at 4:00 a.m. The supervisor indicated that the employing establishment was controverting the claim due to “performance of duty.”

Appellant submitted a form report entitled “Authorization for Examination and/or Treatment.” A portion of the form was completed on May 20, 2016 by an attending physician with an illegible signature. The physician noted that appellant related the history of injury, “[T]hat a man was on the side of the building that she didn’t know and it gave her an anxiety attack.” The physician diagnosed anxiety disorder and checked a box marked “Yes” indicating that the condition was caused or aggravated by the employment incident. Appellant submitted other reports dated May 20, 2016 from the same attending physician.

In a June 6, 2016 letter, the employing establishment controverted appellant’s May 20, 2016 claimed injury.

In a June 13, 2016 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim for a work-related May 20, 2016 injury. It requested that she complete and return a development questionnaire which asked for additional factual information as follows:

“1. Since the time of this event was, according to your employing agency, before you began your work shift on 05/20/2016. State where you were and what you were doing at the time your injury occurred. Provide a detailed description as to how your injury occurred.

“2. Provide statements from any persons who witnessed your injury or had immediate knowledge of it, or other documentation that supports your claim.

“3. State the immediate effects of the injury and what you did immediately thereafter.

“4. Did you have any similar disability or symptoms before the injury? If so, describe the prior condition. Please send records of all prior treatment.”³

³ On June 13, 2016 OWCP also requested additional information from the employing establishment.

The record contains a report completed on May 20, 2016 by a deputy with the Madison County Sheriff's Office. The deputy noted that he was dispatched to the employing establishment at approximately 4:23 a.m. on May 20, 2016 and that upon arrival he made contact with the complainant (*i.e.*, appellant). He noted that appellant reported that she arrived for work at the listed address and reported that there was a white male on the premises, who yelled "Hey!" to her, and then took off running away from her. Appellant reported to the sheriff that she left the premises and then contacted the sheriff's office. The deputy noted that he responded, but did not make contact with the male subject. Another deputy provided a supplemental narrative to the report on June 16, 2016 noting, "The complainant in this report contact[ed] this office and advised she wanted to change a sentence in the report she had filed. She advised that the deputy had written that the subject in question took off running away from her and it should say 'he came towards her in an aggressive manner.'"

Appellant's supervisor submitted a June 7, 2016 e-mail that appellant had sent to another employing establishment official. She indicated that appellant called her at 4:17 a.m. on May 20, 2016 and advised her of the claimed incident. The supervisor noted that she arrived at the office approximately 15 minutes later and saw that law officials were in the parking lot after being called by appellant. She advised that one officer entered the building with her and they searched the building, but were unable to find an intruder or people in the vicinity. The supervisor indicated that appellant had arrived and had not entered the building. She contended that appellant was not in the performance of duty as she was exiting her car when she saw a man who yelled "Hey" to her. The supervisor noted that appellant returned to her car and left the premises. Appellant had previously complained that she did not want to be returned to the employing establishment's Toney, AL facility where she worked.

The record contains a hand-drawn map of the employing establishment facility, showing appellant located on the south side of the premises and an "assailant" located at the southwest corner of the premises building. It is unclear from the record who produced the drawing.

In a June 14, 2016 report, an attending clinical psychologist, Dr. Danny E. Blanchard, noted that appellant reported that on May 20, 2016 "while arriving at work during her normal work shift and exiting her vehicle in a dark parking lot she was accosted by an unidentified white male."

By decision dated July 15, 2016, OWCP denied appellant's traumatic injury claim. It found that she had failed to establish the factual component of her claim as she had not responded to the June 13, 2016 development letter or return the attached questionnaire.

On August 2, 2016 appellant requested reconsideration of the July 15, 2016 decision denying her claim.

Appellant submitted a July 25, 2016 narrative statement in which she asserted that at approximately 4:05 a.m. on May 20, 2016 she was exiting her vehicle to enter the employing establishment facility and "there was a white man standing on the west side of the building." She indicated that, once she exited her vehicle, "he yelled 'Hey' to me walking towards me in an aggressive manner." Appellant indicated that she then ran back to her car and drove away from the building. She noted that she had never seen this man before and that she reported the

incident to 911. Appellant called her immediate supervisor who responded, “I need you to go back so that you can do Amazon” and “the Amazon man can search the property.” She noted that, despite being fearful, she returned to the employing establishment facility. Appellant indicated that she gave her verbal report when the police arrived.

By decision dated September 15, 2016, OWCP denied modification of its July 15, 2016 decision denying appellant’s claim for a work-related May 20, 2016 injury. It noted:

“Your entire file was reviewed including the most recent July 25, 2016 statement. The evidence on file is not sufficient to support the 05/20/2016 incident occurred as alleged. The factual component of the case file does not support you were approached and/or accosted by an unidentified white male on postal premises on the above date.”

* * *

“I find that you have not submitted sufficient evidence to establish the first component of fact of injury.... To date, evidence sufficient to demonstrate that you sustained a work-related injury on May 20, 2016 as alleged has not been received. The information of record is such as to cast doubt as to whether the incident occurred as alleged. For the foregoing reasons, you have failed to meet your burden of proof requirement, as fact of injury has not been established.”

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 timely filed within the applicable time limitation period of FECA, that an injury was sustained 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.⁴ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at

⁴ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. § 10.5 (q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

the time, place, and in the manner alleged.⁶ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

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 or her subsequent course of action.⁸ An employee has not met his or her burden of proof 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.⁹ 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.¹⁰ 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.¹¹

ANALYSIS

The Board finds that the evidence of record contains inconsistencies that cast serious doubt upon the validity of appellant's claim for a traumatic injury. The Board notes that appellant's account of what happened on the morning of May 20, 2016 changed over time. However, appellant has not provided any explanation for these changes.

When appellant initially filed her Form CA-1 on May 20, 2016 she indicated that she sustained injury to her nervous system when, at 4:20 a.m. on that date, she saw a man "standing on the west side of the building." In a May 20, 2016 report, an attending physician noted that appellant reported that the history of injury on May 20, 2016 was as follows, "[T]hat a man was on the side of the building that she didn't know and it gave her an anxiety attack."

The Board notes that the record contains a report completed on May 20, 2016 by a deputy with the Madison County Sheriff's Office which contains a different account. The deputy noted that he was dispatched to the employing establishment's Toney, AL facility, at approximately 4:23 a.m. on May 20, 2016 at which time appellant reported that there had been a white male on the premises who yelled "Hey!" to her, and then took off running away from her. A June 16, 2016 narrative supplement to this report shows that appellant's account of the event of May 20, 2016 changed again. The addendum reads, "The complainant in this report contact[ed] this office and advised she wanted to change a sentence in the report she had filed. She advised the

⁶ *Julie B. Hawkins*, 38 ECAB 393 (1987).

⁷ *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

⁹ *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁰ *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

¹¹ *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

deputy had written that the subject in question took off running away from her and it should say ‘he came towards her in an aggressive manner.’”

The Board notes that appellant did not respond to OWCP’s June 13, 2016 federal development letter or questionnaire. After OWCP denied her claim on July 15, 2016, appellant submitted a narrative account of the events of May 20, 2016. In the July 25, 2016 statement, she asserted that at approximately 4:05 a.m. on May 20, 2016 she was exiting her vehicle to enter her workplace building at the employing establishment and “there was a white man standing on the west side of the building.” Appellant indicated that, once she exited her vehicle, “he yelled ‘Hey’ to me walking towards me in an aggressive manner.” However, she did not explain the discrepancy of this account with her earlier accounts which indicated that either the man was simply standing on the premises or that he stood on the premises and then ran away from her.

In a June 14, 2016 report, an attending clinical psychologist, Dr. Blanchard, noted that appellant reported that on May 20, 2016 “while arriving at work during her normal work shift and exiting her vehicle in a dark parking lot she was accosted by an unidentified white male.” Appellant also failed to explain why this account of the May 20, 2016 incident differed from her earlier accounts of the events of that date.

The Board finds that given these unresolved discrepancies, there are inconsistencies in the evidence of record that cast serious doubt upon the validity of appellant’s claim for a work-related May 20, 2016 injury.¹² For these reasons, appellant did not establish the factual aspect of her claim for a work-related injury on May 20, 2016 and OWCP properly denied her claim.

Appellant may submit new evidence or argument with a written request for reconsideration 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.

The Board notes that where an employing establishment properly executes a (Form CA-16) which authorizes medical treatment as a result of an employee’s claim for an employment-related injury, the (Form CA-16) form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim.¹³ The period for which treatment is authorized by a (Form CA-16) is limited to 60 days from the date of issuance, unless terminated earlier by OWCP.¹⁴ The record is silent as to whether OWCP paid for the cost of appellant’s examination or treatment for the period noted on the form.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury causally related to a May 20, 2016 employment incident.

¹² See *supra* note 10.

¹³ See *Tracy P. Spillane*, 54 ECAB 608 (2003).

¹⁴ See 20 C.F.R. § 10.300(c).

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board