United States Department of Labor
Employees' Compensation Appeals Board

P.F., Appellant	)	
and	)	**Docket No. 17-0509**
	)	**Issued: August 15, 2017**
DEPARTMENT OF THE ARMY, OFFICE OF THE SECRETARY, Arlington, VA, 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 January 9, 2017 appellant filed a timely appeal from a December 19, 2016 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 met her burden of proof to establish an injury in the performance of duty on October 21, 2016.

FACTUAL HISTORY

On November 1, 2016 appellant, then a 53-year-old secretary, filed a traumatic injury claim (Form CA-1) alleging that on October 21, 2016, at 7:20 a.m., she sustained a sprained left toe and a lacerated right knee cap as a result of tripping and falling while walking up the steps of

[1] 5 U.S.C. § 8101 *et seq.*

the Pentagon. She described, "I was walking up the south side parking area where I get dropped off at work, as I was going up the Pentagon steps half way up I trip and fell walking up the steps, several people as me I was ok I told them let me get myself [together] and make it to my office to s[i]it down." Appellant's supervisor noted on the claim form that appellant's tour of duty hours were 7:30 a.m. to 4:30 p.m., and that the alleged incident occurred in the performance of duty. The supervisor also noted that appellant stopped work on October 21, 2016.

In a report dated October 26, 2016, Dr. Joel Zarzuela, a podiatrist, diagnosed left foot sprain and an edema of the left foot. He noted that on October 21, 2016, appellant was ascending the steps of the Pentagon when she fell forward, gashing her right knee open and injuring her left foot.

On November 16, 2016 Dr. David Zijerdi, a Board-certified orthopedic surgeon, diagnosed a right knee contusion in the setting of underlying chondromalacia. He noted that appellant fell onto her right knee while ascending the Pentagon steps on October 21, 2016.

In a report dated November 17, 2016, Dr. Zarzuela added tendinitis of the left foot to appellant's list of diagnosed conditions.

By letter dated November 18, 2016, OWCP informed appellant of the evidence needed to establish her claim. It required additional information regarding the circumstances of the injury on October 21, 2016, specifically whether she was on the premises of the employing establishment, whether the parking lot of the employing establishment was owned by the employing establishment, whether she was required to park in the lot, and information regarding the cause of her fall. Appellant was afforded 30 days to submit this additional evidence. She did not respond. On the same date, OWCP also requested information from the employing establishment regarding whether appellant was on the premises of the employing establishment at the time of injury. The employing establishment also failed to respond.

By decision dated December 19, 2016, OWCP denied appellant's claim for compensation. It found that because she had not responded to its inquiries regarding the specific location of the fall and other circumstances surrounding the fall she had not established the factual portion of her claim. OWCP also noted that appellant failed to submit sufficient medical evidence to establish her claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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[3] was sustained in the performance of

[2] *Id*.

[3] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition relates to the employment incident.[5]

With respect to the first component of fact of injury, the employee has the burden of proof to establish the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.[6] 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.[7] 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.[8] 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.[9] 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.[10]

It is a general rule of workers' compensation law that, as to employees having fixed hours and place of work, injuries occurring on the premises of the employing establishment, while the employees are going to or from work, before or after working hours, or at lunch time are compensable.[11]

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[4] *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Id*. *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

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

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

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

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

[10] *D.B.*, 58 ECAB 464, 466-67 (2007); *Robert A. Gregory*, 40 ECAB 478, 483 (1989).

[11] *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation, is causally related to the accepted injury.[12]

ANALYSIS

Appellant has alleged that she sustained injury due to tripping and falling while ascending steps of the Pentagon on October 21, 2016. The Board finds that appellant has failed to explain the circumstances surrounding her fall so as to determine whether the incident occurred in the performance of duty. Appellant did not explain the cause of her fall and she did not sufficiently describe the manner in which her claimed injury occurred.[13] She did not submit evidence to OWCP to further describe her claimed injury when requested in a letter dated November 18, 2016 and has not offered an explanation for this factual deficiency. Without a detailed description of the circumstances of the alleged injury, appellant's claim lacks specificity regarding the claimed mechanism of injury.[14] She did not establish the existence of an employment factor for the reason that her claim lacks specificity regarding the claimed manner of injury.[15]

Accordingly, the Board finds that appellant has not met her burden of proof to establish that she experienced an employment-related incident at the time, place, and in the manner alleged.[16]

As appellant has failed to establish the first component of fact of injury, it is not necessary to discuss whether she submitted medical evidence sufficient to establish that a medical condition existed and whether the condition was causally related to her federal employment.[17] Thus, the Board finds that she has not met her burden of proof to establish an injury in the performance of duty on October 21, 2016, as alleged.

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.

[12] *Michael E. Smith*, 50 ECAB 313 (1999).

[13] *Supra* note 6.

[14] *W.R.*, Docket No. 16-1251 (issued April 21, 2017).

[15] *Bonnie H. Contreras*, 57 ECAB 364, 367 (2006).

[16] *See K.D.*, Docket No. 15-0919 (issued September 2, 2015).

[17] Given that appellant did not establish an employment incident, further consideration of the medical evidence is unnecessary. *See supra* note 15 at 57 ECAB 364, 368 n.10 (2006); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on October 21, 2016.

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2017
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