

FACTUAL HISTORY

On August 18, 2015 appellant, then a 42-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) for an injury on August 6, 2015. Specifically, she stated that she was walking up a hill to deliver mail when she heard her back pop, and her knees buckled. Appellant claimed injury to her lower back and both knees.

In a November 30, 2015 letter, OWCP advised appellant of the evidence needed to establish her claim. Appellant was asked to provide a detailed description as to how her injury occurred and whether she had sustained any other injury on or after that date. She was also asked to provide medical evidence from a qualified physician who diagnosed an injury and explained with medical rationale how her federal work duties on the date in question caused an injury. OWCP afforded appellant 30 days to submit such evidence. No further evidence was received.

By decision dated December 30, 2015, OWCP denied the claim as fact of injury had not been established. It found that the factual evidence was insufficient to establish that the event(s) occurred as alleged and there was no medical documentation to support an injury.

On January 8, 2016 OWCP received a request for a telephonic hearing before OWCP's Branch of Hearings and Review.

In her December 16, 2015 statement, appellant explained that on August 6, 2015 she was delivering mail with a full bag of mail on her back. She walked up a hill with the mailbag on her shoulder and up the stairs to the mailbox to deliver the mail. Appellant attempted to transfer the mailbag to her other shoulder, due to the weight on her back of approximately 40 to 50 pounds. While descending the stairs, her left knee gave out. Appellant fell to both knees on the concrete. As her other hand was on the rail, she did not fall on her face. Appellant managed to sit on the second to bottom stair. Management was called and she was taken by ambulance to the closest hospital. Appellant indicated that she could not walk nor lift herself to get in the ambulance. She left the hospital on crutches. Appellant saw Dr. Joseph Francis Sejud, an emergency medicine specialist, on August 18, September 22, November 3, and December 4, 2015.

An August 6, 2015 emergency department triage report noted that appellant reported lower back and right leg pain with sudden onset while working. She was seen for flare up of chronic low back pain. The emergency room physician noted that appellant was walking uphill delivering mail and felt "pop" in the right calf. A diagnosis of acute or chronic lower back pain and right calf strain was provided.

Medical reports from Dr. Sejud dated June 20 and July 18, 2016 were also provided. In his initial report of June 20, 2016, Dr. Sejud noted that appellant had a prior work-related left knee injury in 2006 with arthroscopy and permanent work restrictions. He reported that, while appellant was walking her route on August 6, 2015, going up an incline, she heard a popping sound in her right knee and began to experience excruciating pain. Appellant reported continued right knee pain and swelling as well as a sensation of the knee giving out or locking at times. Dr. Sejud noted that appellant indicated that her permanent workplace accommodations from her 2006 injury were not heeded by her supervisors and that she has not had any imaging of the right

knee. He noted that appellant's medical history was significant for coronary artery disease and she had a quadruple bypass surgery in March 2016. A provisional diagnosis of right knee sprain was provided, although Dr. Sejud suspected an internal derangement of the right knee based on clinical examination. He referred appellant for a magnetic resonance imaging (MRI) scan of the right knee and released her to modified work. Based on the stated history and commencement of appellant's right knee pain with an acute injury, Dr. Sejud opined that appellant was suffering from a work-related injury.

In a July 18, 2016 report, Dr. Sejud noted that appellant was working with restrictions and had not yet been able to obtain the MRI scan of her right knee. He indicated that the working diagnosis was right knee sprain, but believed that her actual pathology was likely more severe based on her clinical examination findings and symptoms. Dr. Sejud indicated that a Form CA-17 was completed with work restrictions and requested that appellant obtain an MRI scan of the right knee.

A telephonic hearing was held on September 13, 2016. Appellant indicated that she had a previously accepted claim for her back and knees. She also provided a description of the August 6, 2015 work incident. Appellant testified that she was on her route and was in pain while walking up a hill to deliver the mail, but delivered the mail. She described the stairs going up the hill to the address. As she was descending the stairs, appellant felt pain in her back. As she switched her bag and walked down the stairs, appellant's knee simultaneously gave out and she fell to both knees. The only reason she did not fall on her face, was that she had her hand on the rail. Appellant managed to get to the first stair, but her legs would not straighten. She stated that management and her union steward were called as well as an ambulance. Appellant indicated that she was in the hospital for about two hours and was released, on crutches, to see her family or personal doctor. She testified that she saw her physician approximately five days later, and thereafter once a month. Appellant stated that the physician's office was closed in December and reopened in February, and she continued her treatment. Appellant denied any additional injuries, following the August 6, 2015 incident. She also stated that she underwent a stress test on March 31, 2016, which ultimately resulted in an open-heart quadruple bypass.

In clarifying the description of the August 6, 2016 work incident, appellant stated that her knees were in pain as she was ascending a hill and that her back also hurt. She indicated that because her back hurt, she switched the mailbag from her left to the right shoulder, but as she was coming down the stairs, her knees gave out and she fell right to the ground and both knees hit the concrete.

The hearing representative discussed discrepancies in the evidence and provided appellant a chance to clarify. Appellant stated that the house was high on the hill where she delivered the mail. As she was coming down the stairs, she switched the mailbag from one shoulder to the other and her back popped and her knees buckled simultaneously and she fell to the floor. Appellant stated that her claim was for a knee injury and that was why an ambulance was called, as she could not straighten out her legs or walk down the hill. The hearing representative kept the case open for 30 days to allow appellant to submit additional evidence. No additional evidence was received into the record.

By decision dated November 28, 2016, an OWCP hearing representative affirmed OWCP's December 30, 2015 decision. The hearing representative found that there were unresolved inconsistencies in the evidence of record which cast significant doubt on the claim.

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.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

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.⁵ 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.⁶ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.⁷

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.⁸ 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 her subsequent course of action. 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. 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

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

⁴ S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ T.H., 59 ECAB 388 (2008).

⁷ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁸ R.T., Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.⁹

ANALYSIS

The Board finds that appellant has not established fact of injury due to inconsistencies in the evidence that cast serious doubt as to whether the specific traumatic incident occurred at the time, place, and in the manner alleged on August 6, 2015.

The Board finds that appellant's statements are insufficient to establish the claimed incident due to the conflicting evidence regarding how the claimed injury occurred. On the traumatic injury claim form, appellant alleged injury to her lower back and both knees. She stated that she was walking up a hill to deliver mail when she heard her back pop and her left and right knee buckled. Appellant did not mention being on stairs or falling.

The emergency room records from August 6, 2015 provide a different description of the alleged incident. The August 6, 2015 emergency department triage report noted that appellant reported lower back and right leg pain with sudden onset while working. The emergency room physician noted that appellant was walking uphill while delivering mail and felt "pop" in her right calf. The diagnosis given was that of an acute or chronic lower back pain and right calf strain. There was no mention of a knee injury, or a fall on stairs.

In her December 16, 2015 narrative statement, appellant provided yet another description of the alleged incident. She indicated that on August 6, 2015 she was delivering mail to a residence with a full bag of mail on her back. Appellant walked up the hill with the mailbag on her shoulder and up the stairs to the mailbox to deliver the mail. She attempted to transfer the mailbag to her other shoulder, due to the weight on her back of approximately 40 to 50 pounds and her left knee gave out while she descended the stairs. Appellant fell to both knees on the concrete, with her other hand on the rail, so she would not fall on her face. At the hearing, she maintained that her statement of December 16, 2015 was an accurate description of the injury. However, appellant did not mention hearing her back pop and stated that only her left knee, not both knees, gave out. The fall described by appellant on the stairs was not mentioned in either the CA-1 form or the emergency room records on the date of injury, both of which indicated that appellant had felt pain while walking up a hill delivering mail.

Dr. Sejud initial evaluation of June 20, 2016 provided another description of injury. He indicated that appellant was walking on her route on August 6, 2015, going up an incline, when she heard a popping sound in her right knee and began to experience excruciating pain. Dr. Sejud's provisional diagnosis was right knee sprain. He did not mention or state that appellant was injured coming down stairs, or due to a fall down the stairs with both knees on the concrete, as appellant claimed in her written statement of December 16, 2015. Dr. Sejud also did not mention any back pain or a back injury.

The Board notes that these statements and supporting documents show inconsistencies with regard to appellant's account of how the claimed injury occurred and events occurring near

⁹ *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

the time of the claimed injury. The circumstances of this case, therefore, cast serious doubt upon the occurrence of an August 6, 2015 incident at the time, place, and in the manner alleged by appellant. Given the inconsistencies in the evidence regarding how she sustained her injury, the Board finds that the evidence of record is insufficient to establish a traumatic incident in the performance of duty on August 6, 2015, as alleged.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.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish an injury in the performance of duty on August 6, 2016

ORDER

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

Issued: June 12, 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

¹⁰ See *Matthew B. Copeland*, 6 ECAB 398, 399 (1953) (where the Board found that discrepancies and inconsistencies in appellant's statements describing the injury created serious doubts that the injury was sustained in the performance of duty); see also *Mary Joan Coppolino*, 43 ECAB 988 (1992).