United States Department of Labor
Employees' Compensation Appeals Board

M.L., Appellant	)	
and	)	**Docket No. 16-1723**
	)	**Issued: March 1, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 24, 2016 appellant filed a timely appeal from a May 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.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish a traumatic injury in the performance of duty on March 21, 2016.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Boards notes that appellant submitted new evidence on appeal. The Board, however, cannot consider this evidence as its review of the case is limited to the evidence of the record which was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On March 28, 2016 appellant, then a 34-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on March 21, 2016 she felt a crack in her ankle and fell to the ground in pain. She noted that the injury occurred at an address on Leonard Street in Brooklyn, NY, but did not indicate the time of the injury.

In a report dated March 21, 2016, Dr. Toluwumi Olafisoye, Board-certified in emergency medicine, noted that appellant had a "fall on [the] same level from slipping, tripping, or stumbling" and discharged her from his care. Dr. Olafisoye diagnosed ankle sprain.

In a note dated March 24, 2016, Dr. Issa Jaradeh, a Board-certified internist, examined a magnetic resonance imaging (MRI) scan of appellant's right foot and assessed her with acute right ankle pain.

By letter dated April 14, 2016, OWCP informed appellant of the evidence needed to establish her claim. It noted that her claim had been reopened for consideration because she had not yet returned to work in a full-time capacity, and requested that she obtain a physician's opinion as to the causal relationship between the incident on March 21, 2016 and her right ankle sprain. OWCP also provided a questionnaire for appellant to complete, which included a request for a detailed description of how the injury occurred, and an explanation of why it took appellant seven days to report the injury. Appellant was afforded 30 days to submit the additional evidence.

OWCP thereafter received an April 8, 2016 report from Dr. Paul Kubiak, a Board-certified orthopedic surgeon, in which he noted that appellant sustained a work injury on March 21, 2016 when she was walking and missed a step on her right side, twisting her right ankle. Dr. Kubiak related that the MRI scan of the right ankle showed no fracture or dislocation. He did note mild Achilles tendinosis, mild posterior tibial tendinitis, mild peroneus longus, and brevis tendinitis. Dr. Kubiak diagnosed right ankle pain and related that he would initiate a course of physical therapy.

In a report dated May 6, 2016, Dr. Kubiak stated his impression of pain in appellant's right ankle. He noted swelling on the anterior to lateral aspect of the ankle and tenderness to palpation at the lateral malleolus. Dr. Kubiak concluded that appellant was unable to perform her regular work duties.

By decision dated May 19, 2016, OWCP denied appellant's claim for compensation. It noted that she had not replied to OWCP's development letter of April 14, 2016, that she had not supplied sufficient evidence to establish that her claim occurred as described, and that she had failed to explain the delay in filing her claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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

[3] *Id*.

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[4] was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5]

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.[6]

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.[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]

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[4] 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).

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

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

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

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

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish a traumatic injury in the performance of duty on March 21, 2016.

In her Form CA-1 appellant stated that she sustained right ankle strain as a result of walking when she felt a crack in her ankle, and she fell to the ground in pain. She did not provide the time when the incident occurred as well as a detailed description of how the incident occurred. The only other accounts of the incident come from the March 21, 2016 report of Dr. Olafisoye, who stated that appellant had a "fall on [the] same level from slipping, tripping, or stumbling" and the April 8, 2016 report from Dr. Kubiak in which he related that appellant missed a step and twisted her ankle. OWCP sent appellant a developmental letter dated April 14, 2016 and attached a questionnaire including a request for a detailed description of how the injury occurred, and an explanation of why it took appellant seven days to report the injury. Appellant did not respond to this questionnaire.[12]

While, as noted about, 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.[13] Appellant did not give a detailed explanation of the mechanism of injury.[14] She merely indicated that she was walking when she felt a crack in her ankle and she fell. Dr. Olafisoye's report, related that appellant may have slipped, tripped or stumbled. While Dr. Kubiak indicated that appellant was walking and missed a step, twisting her ankle. These inconsistencies in the history of injury have not been resolved.

Appellant also did not provide clarification as to the time when the injury occurred.[15] She has never related the time when the injury occurred, other than it occurred on March 21, 2016. Appellant also did not file a claim until a week after the injury allegedly occurred and failed to explain the reason for this delay. Due to these unexplained inconsistencies, appellant failed to submit sufficient evidence to establish that she sustained an injury in the performance of duty on March 21, 2016 at the time, place and in the manner alleged.[16]

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] *See T.V.*, Docket No. 15-1336 (October 8, 2015).

[13] *Supra* note 11.

[14] *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[15] *Supra* note 7.

[16] *Supra* note 11.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a traumatic injury in the performance of duty on March 21, 2016.

ORDER

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

Issued: March 1, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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