

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

C.M., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
CAPTAIN JAMES A. LOVELL FEDERAL)
HEALTH CENTER, North Chicago, IL,)
Employer)

**Docket No. 17-0891
Issued: October 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 15, 2017 appellant, filed a timely appeal of a January 30, 2017 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 to consider 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 July 5, 2016, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 14, 2016 appellant, then a 54-year-old medical support assistant, filed a traumatic injury claim (Form CA-1), alleging that, on July 4, 2016 while walking down a hallway, she tripped on a metal plate which divided the corridors and fell, injuring her left leg and scraping her right leg. She did not stop work. Appellant's supervisor, C.A., noted on the CA-1 form by checking a box marked "yes" that appellant was injured in the performance of duty. She agreed with the statement of the facts of the injury as set forth by appellant; however, she advised that the date of the incident was July 5, 2016 instead of July 4, 2016.

Appellant was treated by Dr. Howard Chey, Board-certified in occupational medicine and an employing establishment physician on July 11, 2016. Dr. Chey noted that appellant had sustained an occupational injury, but could return to her permanent job that date. He diagnosed scraped right leg and pulled muscle on the left leg. Dr. Chey advised that appellant should return to the occupational health clinic if her symptoms persisted or worsened. In a September 15, 2016 prescription note, he diagnosed right knee contusion and right patellofemoral syndrome. Dr. Chey referred appellant for physical therapy three times a week for four weeks. An x-ray of the right knee dated September 16, 2016 revealed degenerative changes.

On October 13, 2016 Dr. Chey again saw appellant after the July 2016 fall. He noted that she had recently been seen in an emergency room on October 7, 2016 for right leg pain and had been diagnosed with sciatica. Appellant believed that her right knee pain came from the fall in July 2016 and noted symptoms of pain and tightness over the lateral aspect of her right thigh and knee. Dr. Chey noted an x-ray revealed degenerative changes of the right knee. He diagnosed left knee pain, contusion, previously resolved, but with a recurrence of mild pain, and right knee pain contusion probably related to sciatica. Dr. Chey recommended physical therapy and returned appellant to full duty.

Appellant also provided an undated report from Dr. Thomas Bennett, a chiropractor, who diagnosed sacroiliitis, disorder of the sacrum, lumbosacral nonallopathic lesions, lumbago, sciatica, lumbar muscle spasm, lumbar non allopathic lesions, and pelvic nonallopathic lesions. Dr. Bennett noted that appellant had undergone a conservative course of treatment including manual therapies. Appellant also provided an October 7, 2016 treatment note from a registered nurse as well as physical therapy notes from October 13 through November 10, 2016.

By letter dated December 21, 2016, OWCP advised appellant that her claim had originally been received as a simple, uncontroverted injury, which resulted in minimal or no time loss from work. The claim was administratively handled to allow limited medical payments, but the merits of the claim had not been formally adjudicated. OWCP advised that, because the medical bills exceeded \$1,500.00, the claim would be formally adjudicated. It requested that appellant submit additional information including a comprehensive medical report from her treating physician with a reasoned explanation as to how specific work factors or incidents contributed to her claimed injuries. OWCP further requested that she respond to questions which substantiate the factual allegations of her claim.

Appellant submitted physical therapy notes dated February 5, 2014 to December 22, 2016. She also submitted notes from a registered nurse dated August 31, 2014

who treated her for injuries sustained from an earlier incident when she missed a step at a curb and fell injuring her right groin. Appellant had reported at the time right groin, right low back, and right knee pain. In an October 7, 2016 report, a nurse treated appellant for right hip pain radiating to the right leg and lower back. Appellant denied any recent injury or trauma and reported a history of back pain for two years with sciatica.

In a decision dated January 30, 2017, OWCP denied appellant's claim for compensation on the "factual component" as the evidence of record did not support that the injury or events occurred as alleged. It indicated that she had failed to respond to the December 21, 2016 development letter, which sought to clarify the specific work duties performed which could have aggravated her condition and how often she performed those activities.

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 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 is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

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.³

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.⁴ 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 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 obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.⁵

² Gary J. Watling, 52 ECAB 357 (2001).

³ T.H., 59 ECAB 388 (2008).

⁴ R.T., Docket No. 08-0408 (issued December 16, 2008); Gregory J. Reser, 57 ECAB 277 (2005).

⁵ Betty J. Smith, 54 ECAB 174 (2002).

ANALYSIS

OWCP denied appellant's claim because she failed to establish that the claimed work incident occurred as alleged. In the present case, the evidence of record supports that appellant's duties as a medical support assistant involved walking through the employing establishment corridors while performing her work duties when her left foot slipped. There is no dispute that she was actually doing the job of a medical support assistant on July 5, 2016 when she alleges an injury. Specifically, appellant's supervisor, C.A., on the CA-1 form noted with a check mark "yes" that appellant was injured in the performance of duty. She agreed with the knowledge of the facts of the injury as set forth by appellant, but clarified that the date of the incident was July 5, 2016 and not July 4, 2016 as noted by appellant. While there was an error about the date of the incident on the CA-1 form, appellant's supervisor confirmed that the correct date was July 5, 2016 and did not dispute that appellant was performing her assigned work duties.

Additionally, the history of the work incident was confirmed by contemporaneous medical reports. The Board notes that appellant reported the injury the following day and sought medical treatment on July 11, 2016 for a diagnosed scraped right leg and pulled muscle of the left leg. Appellant provided her medical care providers with a consistent history of injury. On July 11, 2016 she was treated by Dr. Chey who noted that she sustained an occupational injury and could return to her permanent job on July 11, 2016. Dr. Chey diagnosed scraped right leg and pulled muscle on the left leg and advised appellant to complete an injury report with her supervisor. The Board finds that, the evidence is undisputed that on July 5, 2016, she was walking down a corridor when she slipped and then tripped while performing her work duties.

As there is no dispute that appellant slipped and fell in the performance of her duties on July 5, 2016, the Board finds that the first component of fact of injury, the claimed incident, occurred as alleged.⁶ Given that she has established that the July 5, 2016 employment incident occurred as alleged, the question becomes whether this incident caused her an injury. As OWCP found that appellant did not establish fact of injury it did not analyze or develop the medical evidence.⁷ Thus, the Board will set aside OWCP's January 30, 2017 decision and remand the case for further action.⁸ After such further development as is deemed necessary, OWCP shall issue a *de novo* final decision on appellant's traumatic injury claim.

CONCLUSION

The Board finds that the record establishes that the July 5, 2016 employment incident occurred as alleged, but the case is not in posture with regard to the medical evidence. On remand, OWCP will consider the medical evidence and issue a *de novo* decision.

⁶ See *S.W.*, Docket No. 17-0261 (issued May 24, 2017); see also *James R. Flint*, Docket No. 05-0587 (issued June 10, 2005).

⁷ See *S.W.*, *id.*, see also *R.W.*, Docket No. 11-0362 (issued October 24, 2011).

⁸ See *S.W.*, *id.*, see also *T.F.*, Docket No. 12-0439 (issued August 20, 2012).

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: October 20, 2017
Washington, DC

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

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

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