

ISSUE

The issue is whether appellant has met her burden of proof to establish a left knee and ankle injury in the performance of duty on April 11, 2013, as alleged.

FACTUAL HISTORY

On April 22, 2013 appellant, then a 50-year-old legal assistant, filed a traumatic injury claim (Form CA-1) alleging that on April 11, 2013, upon exiting the building after work, her left foot slipped on ice and she immediately pressed her right foot down and balanced herself to keep from falling, causing her to jerk and twist her left leg. She stopped work on April 12, 2013 and returned to work on April 22, 2013. Appellant's supervisor, M.M., controverted appellant's claim asserting that appellant had not slipped or fallen at work.

In an attached statement, M.M. indicated that on April 12, 2013 he was approached by group supervisor A.V. and informed that appellant had called and reported that she had fallen on the ice as she left the building after work the previous evening and wanted to speak to him about the incident. M.M. contacted appellant and she reported that she had slipped and fallen on the ice as she exited the building the previous evening around 5:40 p.m. Appellant indicated that she immediately called D.H., a lead case technician, and told her what happened. She indicated that she was seeking medical attention as she hurt her right leg and ankle. M.M. noted speaking with D.H. on April 12, 2013 and she indicated that appellant had called her the previous evening to tell her that it was icy out and to tell others to be careful but that she did not report a slip or fall incident. Appellant called him on Tuesday, April 16, 2013 and left a message that she would not be into work for the remainder of the week and that she wanted to file a workers' compensation claim. M.M. spoke to her by telephone and she changed her account of what happened and stated that she did not fall, rather, she slipped three times on the icy sidewalk as she exited the building and jerked her leg. He noted the medical documentation submitted by appellant on April 16, 2013 conflicted with what she initially and subsequently reported. The medical documents provided on April 16, 2013 including discharge instructions for a lower left extremity soft tissue injury status post fall. Also, the injured worker report dated April 12, 2013 stated the date of injury of April 10, 2013 and that she "rolled ankle @ work with diagnosis R Ankle sprain."

M.M. noted reviewing the camera surveillance footage when appellant exited the building on April 10 and 11, 2013 and indicated that there was no slip and fall. He noted that appellant exhausted all of her leave, including advanced leave, and has had a history of leave issues. M.M. noted that appellant had a prior workers' compensation claim which resulted in a double knee replacement. He advised that in the last year appellant had reported and taken leave from work for falling at home and slipping and falling in the parking lot where she resides. M.M. indicated that appellant's account of what happened was suspect and appeared to contradict initial reports from various employees, medical documentation, and surveillance footage. He further indicated that the weather conditions in the area on Thursday, April 11, 2013 consisted of a wintry mix including cold temperatures and rainy conditions the entire day.

M.M. referenced a statement from M.L., an administrative assistant, who noted that appellant called on April 12, 2013 and wanted to speak to M.M. to let him know that she was not

coming in because she fell and injured her knee and ankle when she was leaving the office on Thursday, April 11, 2013.

An e-mail dated April 15, 2013 from P.W., group supervisor, noted speaking to appellant on April 15, 2013 who indicated that she would not be in that day because she was trying to get a doctor's appointment. She explained that on Thursday as she was leaving work she slipped a couple of times going to her car as it was icy in the parking lot. Appellant reported slipping immediately after opening the door and stepping onto the sidewalk and a couple more times as she was making her way to her car. She indicated that her left ankle was sprained.

An e-mail dated April 15, 2013 from A.V. indicated that appellant called Friday morning to report that she had a slip and fall when leaving the office on April 11, 2013 at approximately 5:38 p.m. due to icy conditions. Appellant reported calling D.H after the incident and informed her that she sustained a sprain as a result of the fall. A.V. indicated that she and M.M. viewed the security surveillance tape and watched appellant walk to her car from two different camera angles and did not see that she fell.

In a letter dated May 1, 2013, OWCP advised appellant of the type of evidence needed to establish her claim. It requested that appellant substantiate the factual elements of her claim and respond to an attached questionnaire.

Appellant was seen in an emergency room on April 12, 2013 and diagnosed with left lower extremity soft tissue injury status post fall. She reported that she slipped and caught herself 20 hours prior and had pain in her knee, lower leg, ankle and foot. Appellant did not strike her head or hurt her arms while arresting her fall. She was provided discharge instructions for left lower extremity soft tissue injury status post fall. An April 12, 2013 x-ray of the left knee and tibia revealed no acute abnormality while a left foot x-ray revealed inferior calcaneal spur, hallux valgus deformity and hammertoes. An April 26, 2013 bone scan revealed an increase in radiopharmaceutical concentration consistent with loosening of knee replacement.

Appellant submitted an injured workers report dated April 12, 2013 prepared by an unidentified healthcare provider who noted a date of injury of April 10, 2013. She reported rolling her ankle at work. Appellant was diagnosed with a right ankle sprain. She was given an ankle splint and crutches. Appellant was referred to an orthopedist and returned to sedentary duty for five days.

Appellant was treated by Dr. Nisha Vashishta, a Board-certified family practitioner, on April 15, 2013 who noted appellant was excused from work from April 12 to 19, 2013. She was treated by Dr. Joseph Yacisen, an osteopath, on April 19, 2013 who noted that appellant could return to regular duties on April 19, 2013.

In a statement dated May 7, 2013, appellant indicated that on the day of the injury she started work at 9:08 a.m. and ended at 5:38 p.m. She reported that she was on the employing establishment's premises at the time of the injury and was exiting the building through the employee door at the end of her shift. Appellant indicated that she was injured immediately exiting the building on the walkway not in the parking lot. She noted that the building was not owned by the Federal Government but was leased to the employing establishment who was the

only occupant. Appellant indicated that she was required to park in this lot and there was no parking fee.

On May 22, 2013 appellant was treated in an emergency room by Dr. Robert Orr, an osteopath, on May 22, 2013 for left knee pain and joint effusion. She reported a history of left knee replacement and noted that she injured her knee in April when she slipped on ice. Appellant was diagnosed with loosening hardware and surgery was recommended.

In a statement dated June 10, 2013, M.M. provided the digital video disc copy of the surveillance footage of April 11, 2013 relating to appellant's claim. He indicated referencing the video as the primary reason for controverting appellant's claim. M.M. noted inconsistencies in the reporting of the injury by appellant and believed the video footage did not support her claim. He provided two video files, one from the corner of the building exit closet to the employee door and another from the other end of the building. M.M. noted that appellant had excessive leave usage and abuse in the last year after several slip and fall accidents.

In a June 14, 2013 decision, OWCP denied appellant's claim for compensation as the evidence of record did not support that the injury or events occurred as alleged.

Appellant submitted an April 16, 2013 report from Dr. Vashishta who treated her for a left knee injury. She reported that on April 11, 2013 she stepped out of her doorway and slipped but did not fall. Appellant indicated being jarred and having left lower leg pain. She was seen in an emergency room the next day and left ankle, knee and tibia x-rays were normal. Dr. Vashishta diagnosed left leg pain, soft tissue injury.

On April 19, 2013 appellant was seen by Dr. Yacisen who treated her for left knee pain. She reported that on April 11, 2013 she had slipped on the ice and twisted her knee and slipped three more times before entering her vehicle. Dr. Yacisen noted that appellant's symptoms were related to a "fell twisting knee but patient caught herself." He diagnosed degenerative joint disease of the left ankle, left total knee replacement, possible tibial loosening, and ankle sprain. Dr. Yacisen and other providers continued submitting reports noting appellant's status.

Appellant submitted an April 22, 2013 employee injury investigation summary which reflected that on April 11, 2013 as she stepped outside of the building appellant's left leg slid out and she immediately planted her right leg and balanced herself to keep from falling. In the process she either twisted or jerked her left leg. Appellant noted thick ice on the walkway with a heavy ice and rain mix coming down and no salt on the area. She indicated sliding three more times on the sidewalk going to her car. Also submitted were handwritten notes from an April 25, 2013 investigation hearing with M.M.

In a statement dated July 1, 2013, appellant reviewed the surveillance video and asserted that the videos did not have a clear view of her immediately upon exiting the employee door. She referenced video "CH07" and noted her slip occurred when she was exiting the door and she held onto the door. Appellant noted at 1:02, 1:16 and 1:23 of the video surveillance she slid again. She asserts that the videos were inconclusive.

On July 3, 2013 appellant requested an oral hearing before an OWCP hearing representative. On July 10, 2013 she provided a log of events for April 11, 2013. Appellant

noted that, upon exiting the building, her left foot slid out from under her and she immediately planted her right leg and righted herself. She indicated that there was about an inch of ice all over the walkway, sidewalk, and grass. Appellant noted a wintery mix was coming down pretty hard with mainly ice pellets and her car was four parking spots away on the left and no cars directly in front of the sidewalk or next to her car. She noted slowly walking to her car and slid about three more times. As soon as she got inside her car appellant called her coworker D.H. to let her know and to warn others.

Appellant responded to M.M.'s supplemental CA-1 statement, and indicated that she reported slipping on ice but not falling. She indicated that she told M.M., M.L., and A.V. that she had not fallen but that she had stopped herself from falling. Appellant asserted that she had provided a consistent history. With regard to the injured worker report dated April 12, 2013 in which the date of injury was listed as April 10, 2013, she indicated that this was a clerical error. Appellant noted that all medical reports stated that she slipped and did not report that she fell. She responded to M.M.'s June 10, 2013 letter and noted that she had not been provided with a copy of the video until July 1, 2013. Appellant noted that in 2012 she fell at her pool, she fell at home, and on February 11, 2013 she sprained her right ankle when stepping down an apartment sidewalk onto ice. In an October 11, 2013 letter to OWCP, she resubmitted excerpts from evidence of record and asserted that she had provided a consistent account of her April 11, 2013 injury.

In a January 10, 2014 letter, appellant's prior attorney disputed the employing establishment's allegation that appellant had changed her account of how the injury occurred. He asserted that in his conversations with appellant she never changed her account and advised that she "slipped" and never stated that she fell. Appellant reported that she was aware of surveillance cameras monitoring the doorway as she exited and the parking lot. Counsel suggested that the person who stated appellant alleged she had "slipped and fallen" misunderstood her account.

M.M., in a January 27, 2014 statement, noted that appellant had multiple prior medical issues, including her left knee. He asserted that appellant did not injure her left knee in the manner in which she alleged when she exited the building after work on April 11, 2013. Appellant reported that she slipped four times with the first time occurring as she directly exited the building door with three subsequent slips. M.M. asserts that this was not accurate and referenced the surveillance video exterior camera angle in which the employee door swings open and appellant walks directly out of the building without incident and stops only momentarily to put something into her hand bag and proceeds to her vehicle, stepping down as she leans on the hood of her car before entering and driving off. He contended that there was no indication that appellant slipped four times as she reported. In addition, directly following the alleged incident, appellant called no member of management until the following day. He indicated that on April 12, 2013 appellant spoke to M.L. and reported that she fell and injured her knee and ankle the previous day when she was leaving the office.

The employing establishment submitted an April 24, 2013 statement from M.L. who noted that on April 12, 2013 she answered a telephone call from appellant who indicated that she was trying to get in touch with M.M. to let him know that she was not coming in because she had

fallen and injured her knee and ankle when she was leaving the office on Thursday, April 11, 2013. M.L. indicated that she referred the call to A.V.

In a decision dated February 21, 2014, an OWCP hearing representative affirmed the decision dated June 14, 2013.

On February 19, 2015 appellant requested reconsideration. She asserted that she had submitted sufficient evidence to establish her claim. Appellant indicated that she never changed her account of the incident. She further noted that the video surveillance did not supply definitive proof as it failed to provide a clear view of her from the front as she exited the door. Also submitted was an employee manual excerpt regarding leave policy.

Appellant submitted a statement from S.P., of Country Place Apartments, dated July 3, 2014, who indicated that on April 11, 2013 appellant called the leasing office to inform them that she had slipped at work and requested that the sidewalks be salted.

Appellant submitted an Equal Employment Opportunity (EEO) complaint dated October 7, 2014 which was accepted for investigation regarding whether the employing establishment subjected her to harassment (nonsexual) on the basis of disability (physical) beginning on April 12, 2013. The claim was dismissed for failure to state a claim with regard to appellant's allegation that she was subject to retaliation for filing a workers' compensation claim.³

In a decision dated May 27, 2015, OWCP denied modification of the decision dated February 21, 2014.

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 are 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.⁴

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

³ Appellant also provided a March 3, 2014, treatment note from Dr. Vashishta who advised that appellant's appointment on April 16, 2013 was due to slipping at work.

⁴ *Gary J. Watling*, 52 ECAB 357 (2001).

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.⁵

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.⁶ 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 obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.⁷

ANALYSIS

OWCP denied appellant's claim because the evidence of record did not support that the injury or events occurred as alleged. In the present case, appellant, a legal assistant, filed a traumatic injury claim on April 22, 2013, alleging that on April 11, 2013, upon exiting the building after work her left foot slipped on ice and she immediately pressed her right foot down and balanced herself to keep from falling causing her to jerk and twist her left leg. However, the Board notes that there are inconsistencies in the evidence which cast serious doubt upon the validity of the claim. The Board finds that the claimed employment incident did not occur as alleged.

The Board notes that the video surveillance disc dated April 11, 2013 shows two camera angles of appellant just after she exits the building and walks to her car. It does not show appellant falling or any noticeable slips by appellant from the camera angles provided.

The record has differing accounts regarding how the claimed left knee injury occurred. On the April 22, 2013 Form CA-1, appellant alleged that on April 11, 2013, as she exited the building after work her left foot slipped on ice and she immediately pressed her right foot down and balanced herself to keep from falling causing her to jerk and twist her left leg. However, a statement from her supervisor M.M. does not support that the incident occurred as appellant alleged. M.M. indicated that on April 12, 2013, he was approached by group supervisor A.V. and informed that appellant had called in and reported that she had fallen on the ice as she left the building after work the previous evening and wanted to speak to him about the incident. He spoke with appellant and she reported that she had slipped and fallen on the ice as she exited the building the previous evening around 5:40 p.m. Additionally, M.M. noted speaking with D.H. on April 12, 2013 and she indicated that appellant had called her the previous day to tell her that it was icy out and to tell others to be careful; but appellant did not report a slip or fall incident to

⁵ *T.H.*, 59 ECAB 388 (2008).

⁶ *R.T.*, Docket No. 08-0408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

⁷ *Betty J. Smith*, 54 ECAB 174 (2002).

D.H. An e-mail dated April 15, 2013 from A.V. noted that appellant called the office Friday morning to report that she had a slip and fall leaving the office on April 11, 2013 at approximately 5:38 p.m. due to icy conditions. Further, M.M. reported speaking with appellant on April 16, 2013 and indicated that she had changed her account of what happened and stated that she had not fallen, rather she had slipped three times on the icy sidewalk as she exited the building and jerked her leg. Likewise, an April 24, 2013 statement from M.L. noted that on April 12, 2013 she received a telephone call from appellant who was trying to reach M.M. to let him know that she was not coming in because she had fallen and injured her knee and ankle when she was leaving the office on Thursday, April 11, 2013.⁸

The most contemporaneous medical evidence also does not provide a clear history of the claimed traumatic injury.⁹ An injured workers report dated April 12, 2013 prepared by a healthcare provider noted a date of injury of April 10, 2013. Appellant was diagnosed with “rolled ankle @ work with diagnosis R Ankle sprain.” However, she noted a date of injury on the Form CA-1 of April 11, 2013. Emergency room treatment notes dated April 12, 2013 indicate that appellant asserted that she had not fallen but that she had stopped herself from falling. However, the notes diagnose left lower extremity soft tissue injury status post fall and the discharge instructions indicate status post fall.

While an injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, the employee’s statement must be consistent with the surrounding facts and circumstances and her subsequent course of action. As explained, the most contemporaneous evidence from the employing establishment differs from appellant’s account of the claimed incident and the April 11, 2013 video surveillance disc does not show appellant falling or having any noticeable slips after she exits the building.¹⁰

For these reasons, the Board finds that appellant has failed to establish that the claimed traumatic injury occurred as alleged. As appellant has not established that she sustained the claimed incident on April 11, 2013 as alleged, it is not necessary for the Board to consider the medical evidence regarding causal relationship.¹¹ Consequently, she has not met her burden of proof.

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.

⁸ See *S.S.*, 59 ECAB 315 (2008) (the Board has held that contemporaneous evidence is entitled to greater probative value than later evidence).

⁹ *Id.*; see also *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).

¹⁰ See *R.T.*, Docket No. 08-408 (issued December 16, 2008) (appellant did not establish that she sustained an injury in the manner alleged as her account of the incident was not supported by her coworker and the histories related to her physicians were inconsistent).

¹¹ See *S.P.*, 59 ECAB 184 (2007).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a left knee and ankle injury in the performance of duty on April 11, 2013 as alleged.

ORDER

IT IS HEREBY ORDERED THAT the May 27, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 21, 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