

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

_____)	
A.E., Appellant)	
)	
and)	Docket No. 17-0522
)	Issued: April 13, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Albuquerque, NM, Employer)	
_____)	

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 January 9, 2017 appellant filed a timely appeal from an October 19, 2016 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 over the merits of the claim.²

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury on August 1, 2016 in the performance of duty, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The record provided the Board includes evidence received after OWCP issued its October 19, 2016 decision. The Board's review is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board lacks jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On August 17, 2016 appellant, then a 27-year-old postal support employee sales services and distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on August 1, 2016 she injured her back while in the performance of duty. She alleged that she was “lifting advos and felt a sharp pain in back.” Appellant stopped work at 2:30 p.m. and returned to work the same day at 10:00 p.m. The employing establishment controverted the claim.

Reports from Clare Weinrach, PA-C, certified physician assistant, were received. In her August 1, 2016 attending physician’s report (Form CA-20), Ms. Weinrach noted that appellant reported that she was lifting bundles of advertisements at work and felt a sharp pain in her back. An assessment of thoracic myofascial strain was provided. Appellant was instructed to remain off work the remainder of her shift. In an August 1, 2016 duty status report (Form CA-17), Ms. Weinrach diagnosed muscle and tendon strain of unspecified wall of thorax. She indicated that appellant was to return to modified work on August 2, 2016 with restrictions. In an August 5, 2016 status report, Ms. Weinrach noted that appellant stated that her lower back pain started bothering her last night while working. A diagnosis of strain of muscle and tendon of unspecified wall thorax was provided. Appellant was released to work with restrictions.

Physical therapy notes dated August 5 and 8, 2016 indicated that appellant was evaluated for a thoracic myofascial strain. Appellant reported that she was lifting at work when she experienced pain in the middle of her back.

In a September 12, 2016 development 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, including details such as how heavy the item was, how far she needed to lift it, *etc.* She was also asked to provide medical evidence from a qualified physician which related a diagnosis and explained with medical rationale how the alleged employment incident caused an injury. Appellant was informed that physician assistants were not considered physicians under FECA unless the medical report was countersigned by a physician. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, OWCP received reports dated September 7 and 21, 2016 from Ms. Weinrach and an August 8, 2016 physical therapy report. Ms. Weinrach released appellant from care on September 21, 2016.

By decision dated October 19, 2016, OWCP denied the claim as fact of injury was not established. It found that the factual evidence was insufficient to establish that the incident occurred as alleged. OWCP also noted that there was no medical evidence which established a diagnosed condition causally related to the alleged work injury.

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 he or she actually experienced the employment incident at the time and 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 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. 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.⁹

ANALYSIS

The Board finds that appellant has failed to establish an injury in the performance of duty on August 1, 2016, as alleged.

Appellant has not provided sufficient detail to establish that a traumatic incident occurred as alleged.¹⁰ On her Form CA-1, she alleged that she sustained a back injury on August 1, 2016

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).

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

¹⁰ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

due to “lifting advos.” Appellant’s description of the traumatic incident is vague and fails to provide any specific detail to determine the manner in which she sustained her alleged injury. She told Ms. Weinrach that she was lifting bundles of advertisements and had informed the physical therapist that she was lifting at work when she experienced back pain. Appellant’s description did not relate with specificity the circumstances of the injury.¹¹ She did not explain in any detail what “advos” were, how many she lifted, how far she lifted the items, or their weight. Other than lifting, appellant also did not describe the mechanism of injury.¹²

Appellant was provided an opportunity to establish how her alleged injury occurred on August 1, 2016. By letter dated September 12, 2016, OWCP requested that she describe the factual circumstances of her injury and provided her with a factual development questionnaire for completion. Appellant did not respond to the questionnaire and she failed to provide a narrative statement detailing the traumatic incident prior to the issuance of OWCP’s denial of her claim on October 19, 2016. By failing to describe the employment incident and circumstances surrounding her alleged injury, appellant has not established that the traumatic injury occurred at work, as alleged.¹³ Thus, the Board finds that she has not met her burden of proof.¹⁴

As such, it is unnecessary to address the medical evidence regarding causal relationship.¹⁵

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 has not met her burden of proof to establish an injury in the performance of duty on August 1, 2016, as alleged.

¹¹ See *T.N.*, Docket No. 16-1099 (issued December 16, 2016).

¹² See *M.L.*, Docket No. 16-1723 (issued March 1, 2017).

¹³ *G.L.*, Docket No. 17-1635 (issued December 5, 2017).

¹⁴ *Supra* note 11.

¹⁵ *Id.*

ORDER

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

Issued: April 13, 2018
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