

On appeal counsel generally asserts that, as there is no contrary evidence, the claim should be accepted.

FACTUAL HISTORY

On July 31, 2015 appellant, then a 45-year-old wage and hour investigator working part-time modified duty, filed a traumatic injury claim (Form CA-1) alleging that at 10:00 a.m. on Friday, July 17, 2015 she injured her left shoulder, hands, and feet while adjusting her chair. N.H., appellant's supervisor, signed the claim form on August 3, 2016. She indicated that the incident did not occur at 10:00 a.m. on July 17, 2015 as alleged because appellant left a file for her at 11:56 a.m. that day and left work for the day at 12:10 p.m. N.H. further indicated that appellant notified her by e-mail on July 20, 2015 that her left shoulder hurt, but did not mention her hands and feet. She also related that a safety and health specialist had adjusted appellant's chair on April 2, 2015 during an ergonomic assessment.³

In an August 5, 2015 report, Dr. Kaihua Kevin Lai, an attending Board-certified internist, noted seeing appellant for follow up examinations for multiple medical issues including severe neck, back, and shoulder pain, status post a fall at work, plus knee pain and morbid obesity. He indicated that appellant was having difficulty working four hours daily and had gone to an emergency room on July 28, 2015 due to stress. Dr. Lai noted examination findings and diagnosed cervical facet syndrome, accidental fall, low back pain, morbid obesity, unsteady gait, osteoarthritis of multiple sites, and back strain. He noted that appellant had been injured "quite a while ago" and had many muscular symptoms. Dr. Lai advised that she was totally disabled from work until after follow up with a spine specialist and psychiatrist. An August 17, 2015 attending physician's report (Form CA-20) indicated a July 15, 2015 date of injury. On that form report Dr. Lai noted seeing appellant for neck and shoulder pain. He opined that appellant was totally disabled.

On August 27, 2015 appellant filed claims for compensation (Form CA-7) for the period July 30 to August 22, 2015.

By development letter dated September 4, 2015, OWCP noted that, because the employing establishment did not controvert continuation of pay, payment of limited medical expenses were administratively approved, but the merits had not been formally adjudicated. It noted that the claim was reopened for consideration as she had claimed wage loss. OWCP informed appellant of the evidence needed to support her claim and requested that she complete a fact development questionnaire describing in detail how her injury had occurred. Appellant was afforded 30 days to respond.

³ The record in this case, adjudicated by OWCP under File No. xxxxxx524, indicates that appellant has two other FECA claims. One is an accepted traumatic injury claim, adjudicated by OWCP under File No. xxxxxx390. Under that claim, appellant has a pending Board appeal of a January 20, 2017 OWCP decision. It has been assigned Docket No. 17-1004 and will be adjudicated separately. She also has a claim denied by OWCP, adjudicated under File No. xxxxxx039. Under that claim, appellant has a pending Board appeal of a May 30, 2017 OWCP decision, Docket No. 17-1469, that will also be adjudicated separately.

In a report dated August 31, 2015, received by OWCP on September 9, 2015, Dr. Lai advised that appellant should be off work due to multiple joint pain, arthritis, and an unsteady gait. He indicated that she could return to modified duty on December 1, 2015.

By decision dated October 5, 2015, OWCP denied appellant's claim. It found the evidence of record insufficient to establish that appellant actually experienced the incident as alleged.

On October 2, 2015 appellant responded to OWCP's development questionnaire regarding the July 17, 2015 claimed injury. She related that the injury occurred while she was sitting in her chair facing her laptop monitor, pulling at a lever on the chair to adjust its height, but was unable to adjust the chair while sitting down. Appellant did not notice that her headphone cord had wrapped on the chair leg and when she stood, her leg was caught and she tripped and fell forward sustaining left shoulder and bilateral hand and foot injuries. She indicated that she was working alone so she sat on the floor to see if someone would check on her, but after 20 minutes she stood with the help of the chair and took pain medication. Appellant then left for the day and reported the incident to her supervisor N.H. the following workday, Monday, July 20, 2015. She related that she attended training for four hours daily the following week, July 20 to 24, 2015, but was unable to write and take notes because she could not grasp a pen or pencil and had limited ability to use a keyboard. Appellant also noted severe foot pain made it difficult to walk and sit more than 45 minutes without cramping, and that she also had shoulder pain. She advised that on July 27, 28, and 29, 2015 she did not have network or telephone access so that she could not perform her work. Appellant asked the director of operations to assist her in obtaining ergonomic equipment that was approved in February, under File No. xxxxxx039,⁴ but had not been provided.

On September 29, 2016 appellant, through counsel, requested reconsideration.

Additional medical evidence submitted included an October 28, 2015 report in which Dr. Lai advised that appellant was being seen with regard to a July 17, 2015 work injury for persistent neck, back, and shoulder pain. Dr. Lai noted appellant's report that on that day, while trying to adjust her chair, she tripped on a telephone cord and fell forward, injuring both ankles, left shoulder, and left knee, and having pain since. He indicated that when he saw appellant on August 5, 2015 she did not mention this injury, but was now being seen for evaluation separately from her previous injury. On examination Dr. Lai noted her difficulty ambulating with abnormal gait, and tenderness in joints of upper and lower extremities. He found no muscle weakness, effusion, or tenderness. Dr. Lai diagnosed accidental fall, ankle and shoulder sprains, knee pain, and morbid obesity. He advised that appellant sustained an injury at work on July 17, 2015. Dr. Lai recommended that appellant stay out of work. On November 2, 2015 he noted appellant's status, indicated that she remained disabled, and recommended that appellant see a psychiatrist.⁵

⁴ *Id.*

⁵ OWCP also received diagnostic test results.

In a November 16, 2015 report, Dr. Kenneth Schiffman, a Board-certified orthopedic surgeon, noted appellant's complaints of left shoulder and bilateral hand pain resulting from a July 2015 fall injury and a past medical history of diabetes. Examination of each hand was normal. Left shoulder examination demonstrated tenderness in the clavicle and normal range of motion. Following his review of x-ray studies, Dr. Schiffman diagnosed posterior left shoulder pain with possible periscapular strain, and bilateral hand pain of unclear etiology. He continued submitting reports noting appellant's status.

Dr. Michael Pinzur, also a Board-certified orthopedist, saw appellant on November 17, 2015. He noted a history of bilateral foot pain caused by a twisting injury at work. On examination Dr. Pinzur noted reasonable ankle and hind foot motion bilaterally. He advised that x-rays were unremarkable, that appellant had no employment-related foot injury, and that she most likely had diabetic peripheral neuropathy.

On November 18, 2015 appellant saw Dr. Craig McAsey, Board-certified in orthopedic surgery. Dr. McAsey recorded a history that appellant fell on her right knee at work on July 17, 2015 when her left foot became caught in a chair at work. He reported findings and diagnosed right knee contusion and bilateral trochanteric bursitis. Dr. McAsey recommended physical therapy and noted that appellant was pending left knee surgery. On February 15, 2016 he noted appellant's complaints and offered diagnoses.

In an April 20, 2016 report, Dr. Nikhil Verma, Board-certified in orthopedic surgery and sports medicine, noted that appellant was doing well following right shoulder surgery. He did not address the alleged July 17, 2015 work incident. Dr. Verma performed left shoulder arthroscopic rotator cuff repair on May 16, 2016. On a September 4, 2016 report he noted evaluating appellant on August 17, 2015 and advised that she had a past history of two employment injuries, a slip and fall on November 20, 2014, and a fall at her desk on July 17, 2015. Dr. Verma advised that a November 2014 injury caused appellant's right shoulder and left knee conditions.

On May 9, 2016 Dr. Asokumar Buvanendran, Board-certified in anesthesiology and pain medicine, performed lumbar epidural injection. In a September 16, 2016 report Dr. Buvanendran noted that appellant had a prior employment injury on November 20, 2014. He related that on July 17, 2015 appellant was unsuccessful in trying to adjust her chair while sitting, and stood to adjust her chair, catching her left foot on a cord, and fell forward causing injury to her hands. Since that time appellant had problems with her neck, back, bilateral shoulders, bilateral hips, bilateral ankles, right wrist, right elbow, and right knee, and had reinjured her left knee and had an injury to her right knee. His diagnoses included accidental fall, neck sprain, back strain, cervical facet syndrome, contusion of buttock, as well as anxiety and work-related stress.

On December 5, 2016 N.H., appellant's supervisor, submitted comments regarding appellant's July 17, 2015 claim. She advised that on Friday July 17, 2015 she had been in her office from 7:43 a.m. to 3:46 p.m., and that appellant had been at work from 8:10 a.m. to 12:10 p.m. N.H. related that appellant did not report the incident until 1:23 p.m. on Monday, July 20, 2015 when she sent an e-mail reporting that she injured her left shoulder while trying to adjust her chair. She noted that appellant did not report tripping on a cord and falling forward at that

time. N.H. indicated that appellant's headset was wireless and the base had a six-foot power cord directed toward the back wall of appellant's desk. She related that the training appellant attended the following week was with regard to her position as union steward and was unrelated to her federal employment. N.H. attached a copy of appellant's July 20, 2015 e-mail. In that e-mail, appellant related that she gave a requested file to N.H. and, upon returning to her desk, tried to adjust her chair back which got stuck, and when she tried to push it, she hurt her left shoulder. She requested that N.H. complete an incident report and file a CA-1. N.H. also submitted a photograph of appellant's desk top.

In a February 7, 2015 decision, OWCP denied modification of its prior decision. It found the July 17, 2015 incident did not occur as alleged and noted that appellant furnished inconsistent statements about the events of July 17, 2015 which cast serious doubt of the validity of the claim.

LEGAL PRECEDENT

An employee seeking compensation under FECA⁶ has the burden of proof to establish the essential elements of the claim by the weight of reliable, probative, and substantial evidence,⁷ including that he or she is an employee within the meaning of FECA and that the claim was filed within the applicable time limitation,⁸ that an injury in the performance of duty as alleged, and that the disability for work was causally related to the employment injury.⁹

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, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.¹⁰

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.¹¹ 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 his or 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

⁶ *Supra* note 2.

⁷ *J.P.*, 59 ECAB 178 (2007).

⁸ *R.C.*, 59 ECAB 427 (2008).

⁹ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

¹⁰ *T.H.*, 59 ECAB 388 (2008).

¹¹ *R.T.*, Docket No. 08-0408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

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.¹²

ANALYSIS

The Board finds that the evidence of record does not establish that the claimed July 15, 2015 incident occurred as alleged.¹³ In an e-mail dated Monday, July 20, 2015, appellant related that the prior Friday, July 17, 2015 she handed a requested file to N.H. and, upon returning to her desk, tried to adjust her chair back. The chair got stuck, and when she tried to push it she injured her left shoulder. Appellant requested that N.H. complete an incident report and file a Form CA-1. On her July 31, 2015 traumatic injury claim form, she alleged that at 10:00 a.m. on Friday, July 17, 2015 she injured her left shoulder, hands, and feet while adjusting her chair. Appellant made no mention of her leg getting caught in a cord.

N.H., appellant's supervisor, signed the CA-1 on August 3, 2016. She indicated that the incident did not occur at 10:00 a.m. on July 17, 2015, as alleged, because appellant left a file for her at 11:56 a.m. that day and left work for the day at 12:10. N.H. reported that appellant notified her by the July 20, 2015 e-mail that her left shoulder hurt, but did not mention her hands and feet.

In her October 2, 2015 statement, appellant indicated that after she gave the file to N.H., she returned to her desk when the incident happened. She alleged that the injury occurred as she was sitting in her chair facing her laptop monitor, pulling at a lever on the chair to adjust its height, but was unable to adjust the chair sitting down. Appellant indicated that she did not notice that her headphone cord had wrapped on the chair leg and when she stood, her leg was caught and she tripped and fell forward sustaining left shoulder and bilateral hand and foot injuries. She did not attempt to explain the discrepancy between this statement and her initial statement on the CA-1 which did not mention her leg getting tangled in a cord or falling forward.

Appellant saw Dr. Lai on August 5, 2015. At that time she did not mention a July 17, 2015 employment injury. It was not until October 28, 2015 that Dr. Lai recorded a history that on July 17, 2015 appellant hurt both ankles, her left shoulder, and her left knee while trying to adjust her chair. Dr. Lai noted that she tripped on a telephone cord, fell forward, and had bilateral ankle, left shoulder, and left knee pain since. He further acknowledged that appellant did not mention this injury in a visit to him on August 5, 2015. On September 4, 2016 Dr. Verma indicated that appellant fell at her desk on July 17, 2015 and that a November 2014 injury caused right shoulder and left knee conditions. On September 16, 2016 Dr. Buvanendran related that, on July 17, 2015, appellant stood to adjust her chair and caught her left foot on a cord. Other treating physicians did not report any version of the claimed July 17, 2015 incident

¹² *Betty J. Smith*, 54 ECAB 174 (2002).

¹³ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

before November 2015. Consequently, the most contemporaneous medical report, Dr. Lai's August 5, 2015 report, did not mention the claimed July 17, 2015 incident.¹⁴

Appellant's supervisor, N.H., noted on December 5, 2016 that, even though she was in her office until 3:46 p.m. on Friday, July 17, 2015, appellant did not report a claimed injury until Monday, July 20, 2015. N.H. also indicated that the injury could not have occurred at 10:00 a.m. as claimed because appellant brought her a file at 11:23 a.m., and that, as described above, appellant first reported a left shoulder injury while adjusting her chair. She also did not initially indicate that she tripped on a cord and fell forward or that she had other injuries.

The Board finds that there are inconsistencies in the evidence so as to cast doubt upon the validity of appellant's claim that she sustained multiple injuries in the performance of duty on July 17, 2015. As described above, appellant's accounts of the claimed incident are inconsistent. Moreover, the histories related to appellant's physicians are also inconsistent. Lastly, Dr. Lai noted that appellant did not report any July 17, 2015 injury when he examined her on August 5, 2015. For these reasons, the Board finds that the evidence of record does not establish that appellant sustained an injury in the performance of duty on July 17, 2015 as alleged.¹⁵

Thus, the Board finds that appellant has not met her burden of proof to establish fact of injury. As appellant did not establish an incident as alleged, the Board need not discuss the probative value of the medical evidence submitted.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.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish an employment-related injury in the performance of duty on July 17, 2015.

¹⁴ See *S.S.*, 59 ECAB 315 (2008) (the Board has held that contemporaneous evidence is entitled to greater probative value than later evidence).

¹⁵ *R.T.*, *supra* note 11.

¹⁶ *Paul Foster*, 56 ECAB 208 (2004).

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 8, 2018
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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