United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
	)	**Docket No. 17-1779**
and	)	**Issued: February 7, 2018**
DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION, Phoenix, AZ, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 16, 2017 appellant filed a timely appeal from a July 10, 2017 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 the claim.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained traumatic head and neck injuries on November 22, 2016 in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant submitted new evidence accompanying her request for appeal. The Board's jurisdiction is limited to the evidence that was before OWCP at the time it issued the final decision. Thus, the Board is precluded from reviewing this evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On December 15, 2016 appellant, then a 47-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that, while conducting surveillance activities in an automobile on November 22, 2016, she sustained "whiplash" head and neck injuries.

In a January 5, 2017 letter, OWCP requested that appellant submit additional medical and factual evidence in support of her traumatic injury claim. It requested that she submit a detailed description of the alleged November 22, 2016 incident and a narrative medical report from her attending physician explaining causal relationship between the alleged employment incident and the claimed head and neck injuries. OWCP afforded her 30 days to submit such evidence. Appellant did not respond within the time allotted.

By decision dated February 10, 2017, OWCP accepted that the November 22, 2016 employment incident occurred as alleged, but denied the claim because appellant had not provided medical evidence which diagnosed an injury causally related to that incident.

On March 1, 2017 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. She provided a February 23, 2017 letter in which she contended that enclosed medical evidence was sufficient to establish her claim.

Appellant submitted November 22, 2016 hospital emergency room records including laboratory blood test results; discharge instructions for a motor vehicle accident, neck strain and closed head injury; a discharge summary which noted appellant's examination by a physician assistant; and financial documents. Dr. Mohamad Saghir, a Board-certified radiologist, noted appellant's account of a motor vehicle accident earlier that day. He reviewed November 22, 2016 computerized tomography (CT) scans of appellant's brain, cervical spine, thoracic spine, lumbar spine, abdomen, and pelvis. Dr. Saghir opined that all images were negative for fracture or other abnormalities.

Appellant also provided a March 3, 2017 duty status report (Form CA-17) with an illegible signature, which limited appellant to "sitting work only."

By decision dated July 10, 2017, the hearing representative affirmed with modification OWCP's February 10, 2017 decision, finding that the evidence of record was insufficient to establish the claimed November 22, 2016 employment incident occurred as alleged. He noted that there was no history as to how the alleged motor vehicle accident occurred, including where and how hard appellant's vehicle was struck. The hearing representative further found that the medical evidence of record did not contain a firm diagnosis causally related to the alleged November 22, 2016 employment incident.

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 the

[3] *Supra* note 1.

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 or specific condition for which compensation is claimed is causally related to the employment injury.[4] 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.[5]

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.[6] 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.[7]

An employee's statement that an injury occurred at a given time, place, 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 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 so 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

Appellant alleged head and neck injuries on November 22, 2016 while conducting surveillance activities in a motor vehicle. Although she provided November 22, 2016 emergency room records which mentioned a motor vehicle accident, appellant did not submit a description of the alleged incident, or explain when and where it occurred. Appellant did not provide an accident report, supervisory statement, or other factual evidence to corroborate her involvement in a motor vehicle accident while in the performance of duty on November 22, 2016.

OWCP indicated in its February 10, 2017 decision that appellant had established fact of injury, but did not specify which factual evidence of record corroborated her allegations. On

[4] *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[6] *Gary J. Watling*, 52 ECAB 278 (2001).

[7] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[8] *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

[9] *Betty J. Smith*, 54 ECAB 174 (2002).

July 10, 2017 an OWCP hearing representative modified the February 10, 2017 decision to find that the evidence of record failed to establish the incident component of fact of injury. He explained that the factual evidence of record did not establish the time, place, or the manner of the claimed motor vehicle accident. Additionally, the medical evidence of record did not contain a clear diagnosis of an injury related to the alleged November 22, 2016 motor vehicle accident.

OWCP notified appellant of the additional evidence needed to establish her claim, including her detailed factual description of the alleged November 22, 2016 incident and any other factual evidence corroborating its occurrence. As appellant did not submit such evidence, OWCP properly denied the claim as she failed to meet her burden of proof to establish fact of injury.[10]

On appeal, appellant contends that OWCP should accept that she sustained the claimed injuries when conducting surveillance activities in a motor vehicle. As noted above, appellant has not submitted factual evidence to establish that the claimed November 22, 2016 incident occurred at the time, place, and in the manner alleged.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained traumatic head and neck injuries on November 22, 2016 in the performance of duty.

[10] Consequently, it is not necessary to address the medical evidence with respect to causal relationship. *Alvin V. Gadd*, 57 ECAB 172 (2005).

ORDER

IT IS HEREBY ORDERED THAT the July 10, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 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