

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

C.C., Appellant	)	
	)	
and	)	<b>Docket No. 17-1722</b>
	)	<b>Issued: July 5, 2018</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Dallas, TX, 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 3, 2017 appellant filed a timely appeal from a July 17, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a July 9, 2016 traumatic injury in the performance of duty, as alleged.

**FACTUAL HISTORY**

On July 13, 2016 appellant, then a 38-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained tendinitis of the right foot at 5:00 a.m. on July 9, 2016 when she felt a muscle pull in her right foot/heel while walking up the hilly side of Fairview Street.

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

She stopped work on July 9, 2016 and returned to work on July 13, 2016. Appellant's regular work hours were from 8:00 a.m. to 4:30 p.m. In a July 13, 2016 supplemental statement, she indicated that, on July 9, 2016, she felt her muscle pull, but did not feel any pain in her right foot until later that night.

Appellant was treated in the emergency room by Dr. Shawn M. Corwin, an emergency medical specialist, on July 10, 2016 for right foot pain. Dr. Corwin diagnosed right Achilles tendinitis. Appellant was provided with discharge instructions for Achilles tendinitis.

On June 14, 2017 OWCP received appellant's June 9, 2017 claim for compensation (Form CA-7) for disability from work during the period May 30 to June 9, 2017. In support of her wage-loss claim, appellant submitted a June 2, 2017 note from Dr. Ali Shams-Hakimi, DPM, a podiatrist, which indicated that she was seen on May 22, 2017 for Achilles tendinitis and released to work on June 22, 2017.

In a June 14, 2017 development letter, OWCP indicated that when appellant's claim was initially received, it was administratively approved as it appeared to be a minor injury which resulted in minimal or no lost time from work and the employing establishment did not challenge the merits of the case. It advised appellant that her claim was now being formally considered and that the evidence of record was insufficient to support that she was injured in the performance of duty. OWCP asked appellant to submit additional factual information to explain what she was doing at 5:00 a.m. since her regular work shift did not begin until 8:00 a.m. Appellant was also asked to provide a medical report from a physician which contained a medical explanation as to how the reported work incident caused or aggravated a medical condition. She was afforded 30 days to submit the requested information. Appellant did not submit any additional evidence.

By decision dated July 17, 2017, OWCP denied appellant's traumatic injury claim. It found that she had failed to provide sufficient factual and medical evidence to establish that she was in the performance of her federal employment duties when the alleged injury occurred.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including the fact that the individual is an employee of the United States within the meaning of FECA and that the claim was filed within the applicable time limitation.<sup>3</sup> An employee must also establish that he or she sustained an injury in the performance of duty as alleged and that her disability from work, if any, was causally related to the employment injury.<sup>4</sup>

---

<sup>2</sup> *Id.*

<sup>3</sup> *R.C.*, 59 ECAB 427 (2008).

<sup>4</sup> *Id.*, *Elaine Pendleton*, 40 ECAB 1142, 1145 (1989).

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.<sup>5</sup> 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.<sup>6</sup> Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup> An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a July 9, 2016 traumatic injury in the performance of duty, as alleged.

On July 13, 2016 appellant filed a traumatic injury claim alleging that, at 5:00 a.m. on July 9, 2016, she felt a muscle pull while she was walking up a hilly side of Fairview Street. She went to the emergency room the next day and was diagnosed with right Achilles tendinitis. In a letter dated June 14, 2017, OWCP advised appellant of the deficiencies of her claim and requested additional factual evidence to establish that the alleged incident occurred in the performance of duty. Appellant did not submit any additional statements to OWCP describing the alleged July 9, 2016 incident or providing additional details. In its July 17, 2017 decision, OWCP noted that appellant had not provided an explanation as to what she was doing at 5:00 a.m. since her regular shift did not begin until 8:00 a.m.

As part of her burden of proof, appellant must establish all the essential elements of her claim, including that the July 9, 2016 incident occurred in the performance of duty at the time and place, and in the manner alleged.<sup>9</sup> As appellant did not respond to the development letter or otherwise provide evidence in support of her claim, she has failed to meet her burden of proof to establish her claim.

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.

---

<sup>5</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>6</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

<sup>7</sup> *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

<sup>9</sup> *See R.F.*, Docket No. 17-1877 (issued February 6, 2018).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a July 9, 2016 traumatic injury in the performance of duty, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 17, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 5, 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