United States Department of Labor
Employees' Compensation Appeals Board

T.N., Appellant	)	
	)	**Docket No. 18-0325**
and	)	**Issued: July 20, 2018**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Culver City, CA, 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 December 4, 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 this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty on March 27, 2017, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of OWCP's July 10, 2017 decision and on appeal, appellant submitted new evidence. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Thus, the Board is precluded from reviewing this new evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On May 15, 2017 appellant, then a 42-year-old postal support employee (PSE) mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that, on March 27, 2017, she sustained a right ankle sprain when an over-the-road (OTR) container hit her ankle. She did not stop work.

An undated notice from El Segundo Medical Clinic indicated a date of injury of March 27, 2017. The notice also indicated that appellant missed a scheduled appointment on May 26, 2017.

By development letter dated June 7, 2017, OWCP advised appellant of the deficiencies of her claim and requested that she submit a response to a form questionnaire in order to establish that she actually experienced the incident alleged to have caused an injury and a medical report from her attending physician including a diagnosis, history of the injury, examination findings, and a rationalized opinion explaining how the reported work incident caused or aggravated her medical condition. The questionnaire requested that she describe the nature of her injury, how the injury occurred, the immediate effects of her injury, and any prior similar disability or symptoms.

A June 1, 2017 administrative discharge letter from U.S. HealthWorks Medical Group, contained an illegible signature and advised that appellant was no longer under its care regarding her ankle contusion and foot sprain diagnosis because she had missed scheduled appointments on May 10 and 27, and June 1, 2017. The letter indicated that she was last seen on May 19, 2017 and listed her last work restrictions.

Medical reports dated April 21 and May 19, 2017 from Dr. David Hantman, an attending Board-certified internist with U.S. HealthWorks Medical Group, indicated a date of injury of March 27, 2017 with diagnoses of sprain of the right ankle, unspecified ligament, subsequent encounter, contusion of the right ankle, subsequent encounter, strain of the right ankle, subsequent encounter, and joint disorder. Dr. Hantman also advised that appellant had a chronic nonindustrial lumbar disc displacement with constant low grade right lateral radiculopathy and sensory loss on the lateral right foot. He related that this condition and her known left ankle osteoarthritis could impact the status of her ankles. Dr. Hantman noted appellant's work duties and indicated that he had reviewed a mechanism of injury as stated in her initial visit. He released her to return to modified work with restrictions as of April 21, 2017 and addressed her treatment plan.

In a May 3, 2017 report, Dr. Kaochoy Saechao, a physician with U.S. HealthWorks Medical Group Board-certified in occupational medicine, indicated that appellant was being evaluated for a follow-up on an injury she sustained on March 27, 2017. He noted her work duties. Dr. Saechao examined appellant and diagnosed sprain of the tibiofibular ligament of the right ankle, subsequent encounter. He advised that she was expected to reach maximum medical improvement on June 7, 2017. Dr. Saechao further advised that appellant could return to work with restrictions as of the date of his examination.

Appellant completed established patient statements on April 21, May 3 and 19, 2017 regarding the status of her right ankle condition and development of new complaints.

By decision dated July 10, 2017, OWCP denied appellant's traumatic injury claim, finding that the evidence of record failed to establish that the March 27, 2017 employment incident occurred, as alleged. It noted that she did not respond to its inquiries regarding the circumstances of the alleged incident. OWCP further found that the medical evidence of record did not contain a diagnosed medical condition causally related to the claimed 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 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 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]

ANALYSIS

The Board finds that appellant has not submitted sufficient evidence to establish that she sustained a right ankle injury in the performance of duty on March 27, 2017, as alleged.

Appellant must establish all of the elements of her claim in order to prevail. She must prove the time, place, and manner of the alleged incident, and a resulting personal injury.[7] Appellant has not provided a sufficient description of the time, place, and manner of her alleged injury.[8] On her Form CA-1 she stated that she sustained a right ankle sprain on March 27, 2017 when an OTR container hit her ankle. The Board notes that appellant's description of the traumatic incident is imprecise and vague and fails to provide any specific detail or evidence establishing

[3] *Supra* note 1.

[4] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *A.D., id.*; *T.H.*, 59 ECAB 388 (2008).

[7] *See generally John J. Carlone*, 41 ECAB 354 (1989).

[8] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

that the incident occurred as alleged.[9] The information provided is therefore insufficient to establish that the alleged injury occurred in the performance of duty.

On June 7, 2017 OWCP informed appellant that the evidence received to date was insufficient to establish that she actually experienced the incident or employment factor alleged to have caused an injury. Appellant was asked to respond to its factual development questionnaire and provide a detailed description of the alleged employment incident she believed caused her injury. OWCP afforded her 30 days to submit this additional evidence. Appellant did not respond to the questionnaire or provide any supplemental statement or detailed information surrounding the alleged March 27, 2017 work incident prior to the issuance of OWCP's July 10, 2017 decision.[10] While the reports of Dr. Hantman and Dr. Saechao noted appellant's work duties and a March 27, 2017 date of injury, neither physician described how the injury occurred on that date due to a specific incident. Dr. Hantman generally noted that he had reviewed the mechanism of injury provided in appellant's initial visit. The Board finds that appellant has not established that the traumatic injury occurred as alleged.[11] Consequently, it is unnecessary to address the medical evidence of record.[12]

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish an injury in the performance of duty on March 27, 2017, as alleged.

[9] *See C.M.*, Docket No. 17-0627 (issued June 28, 2017); *C.E.*, Docket No. 17-0106 (issued April 20, 2017).

[10] *See R.V.*, Docket No. 17-1286 (issued December 5, 2017); *R.V.*, Docket No. 15-1911 (issued December 11, 2015).

[11] *See P.M.*, Docket No. 16-0483 (issued May 12, 2016).

[12] *See M.P.*, Docket No. 15-0952 (issued July 23, 2015); *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: July 20, 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