United States Department of Labor
Employees' Compensation Appeals Board

D.P., Appellant	)	
and	)	**Docket No. 18-0190**
	)	**Issued: May 22, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, 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 November 3, 2017 appellant filed a timely appeal from an August 14, 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 to consider the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on March 18, 2017, as alleged.

On appeal, appellant alleges that she disagrees with OWCP's decision, that she was injured on the job by another worker, that she is in chronic pain, and that she has been unable to work since the time of the incident.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 22, 2017 appellant, then a 60-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on March 18, 2017 at 1:15 p.m., while in the performance of duty, a container was pushed up against her causing a sprain to her low back. In a supplemental statement accompanying the claim, she related that she was working in the rewrap area and a container was pushed against her. The employing establishment issued an authorization for examination and/or treatment (Form CA-16) on March 18, 2017 authorizing appellant to seek medical treatment. Appellant submitted documents indicating that she was treated at Aria Health Torresdale on March 18, 2017 for back pain.

In a note dated March 18, 2017, coworker W.M. stated that he was coming around rewrap area when he approached a piece of equipment. He alleged that he tried to maneuver around it, but hit the object which "shook rolling stock." W.M. stated that R.H. told people to step back and that he saw appellant step away. He asked if everyone was okay and everyone stated yes. W.M. indicated that he then apologized and continued with his work activities.

By development letter dated March 27, 2017, OWCP informed appellant that further information was necessary to support her claim, and afforded her 30 days to submit the necessary evidence.

In a witness statement dated March 22, 2017, A.A. stated that on March 18, 2017 she was working with two coworkers in the rewrap area and appellant was standing right outside the area talking to a coworker who was standing on a power sack. She noted that a forklift driver turned into the aisle driving backward, that he hit a container that slightly hit an "in house" which hit a yellow pole missing appellant. A.A. stated that appellant exclaimed, "Oh my goodness that was close. He almost got me." She stated that everyone started joking about it, and saying that appellant "just escaped 45 days."

In a witness statement dated March 23, 2017, R.W. indicated that on March 18, 2017 D.J. informed her that appellant needed to see her. She noted that appellant indicated that she had been hit in her inner thigh/groin area and that she got hit by some equipment because of a chain reaction due to one of the drivers hitting another container. Appellant requested to go to the hospital.

In a March 24, 2017 statement, D.J. stated that A.M. told her that she was working in the rewrap area at the time of the alleged incident on March 18, 2017, and saw W.M. come past with a container. She further stated that she could see appellant talking to R.H. and that the mail handler did not hit appellant. In a separate statement, also dated March 24, 2017, D.J. stated that on March 18, 2017 she met R.W. and appellant in the rewrap area, and that appellant stated that she was hit by a container that W.M. was moving when he was passing through the rewrap area. When she asked appellant where she was hit, she rubbed her groin area and stated "right here in my groin area." D.J. noted that she had appellant transported to the hospital, and that when appellant returned from the hospital she was diagnosed with lumbar sprain, not an injury to her groin area. She also stated that during her investigation she had several witnesses tell her that appellant was not hit and that she had stated "that was close."

By decision dated April 28, 2017, OWCP denied appellant's claim. It determined that she had not established that the event occurred as alleged. OWCP further determined that even had appellant established that an incident occurred as alleged, she did not submit any medical evidence to establish that a diagnosed medical condition was causally related to the alleged employment incident.

On May 16, 2017 appellant requested reconsideration. She submitted a May 12, 2017 statement wherein she alleged that the mail handler ran into three stationed in-houses and the third in-house rolled into her back. Appellant alleged that, prior to R.H. pulling her out of the way, the mail handler had already hit her. She alleged that there were no witnesses to the accident. Appellant also submitted physical therapy notes.

By decision dated August 14, 2017, OWCP reviewed the merits of the claim, but denied modification of the prior decision. It determined that appellant had not established that the events occurred as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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, that an injury was sustained 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.[3]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether the fact of injury has been established. Generally, fact of injury consist of two components which must be considered in connection with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[4] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[5]

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.[6] Moreover, an injury does not need to have to be confirmed by eyewitnesses.[7] The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent

[2] *Id.*

[3] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *J.L.*, Docket No. 17-1712 (issued February 12, 2018).

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

[7] *S.B.*, Docket No. 17-1779 (issued on February 7, 2018).

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 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.[8]

ANALYSIS

The Board finds that appellant has not established a traumatic injury in the performance of duty on March 18, 2017, as alleged.

Appellant alleged on the CA-1 claim form that she was working in the rewrap area on March 18, 2017 and a container pushed against her and caused a sprain in her low back. In a subsequent statement dated May 12, 2017, she alleged that the mail handler ran into three stationed in-houses and the third in-house rolled and hit her in the back. OWCP received multiple witness statements. The witness statements agree that there was an incident at the employment establishment that occurred when a forklift, driven by W.M., hit some objects which then caused a chain reaction. However, the witness statements from the individuals who viewed the incident related that appellant was not struck in the incident. W.M. noted that appellant stepped away before anything hit her. A.A. indicated that the forklift hit a yellow pole and missed appellant. She noted that appellant exclaimed, "Oh my goodness that was close. He almost got me." D.J. noted that A.M. told her that appellant was not hit.

Furthermore, D.J. and R.W. indicated that appellant told them that she was hit in her inner thigh/groin area. However, the hospital report indicated that appellant was treated for back pain, claimant filed her claim for a sprain to her lower back, and she alleged in the May 12, 2017 statement that she was hit in her back.

Therefore, there are discrepancies in the record with regard to whether appellant was actually struck by an object on March 18, 2017. Furthermore, there are discrepancies between her allegations that she injured her back and the statements of D.J. and R.W. who contended that appellant told them that she injured her inner thigh/groin area. Due to the inconsistencies in the evidence regarding how appellant sustained her injury and which body party she injured, the Board finds that there is insufficient evidence of record to establish that she sustained an injury in the performance of duty, as alleged.[9]

As appellant did not establish an incident as alleged, the Board need not discuss the probative value of the medical evidence submitted.[10]

The Board notes that a Form CA-16 was issued to appellant on March 18, 2017. Where an employing establishment properly executes a Form CA-16 authorizing medical treatment related

[8] *D.C.*, Docket No. 17-0993 (issued November 20, 2017).

[9] *See A.S.*, Docket No. 16-0735 (issued November 3, 2016).

[10] *Paul Foster*, 56 ECAB 208 (2004).

to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim.[11] The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP.[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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a traumatic injury in the performance of duty on March 18, 2017, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 14, 2017 is affirmed.

Issued: May 22, 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

[11] *See Tracy P. Spillane*, 54 ECAB 608 (2003).

[12] *See* 20 C.F.R. § 10.300(c).