

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

M.M., Appellant)	
)	
and)	Docket No. 18-0523
)	Issued: September 12, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Tucson, AZ, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 17, 2018 appellant filed a timely appeal from a September 8, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 a traumatic left lower extremity injury in the performance of duty on July 17, 2017, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The record provided to the Board includes evidence received after OWCP issued its September 8, 2017 decision. The Board's jurisdiction is limited to the evidence that was in the case record at the time of OWCP's final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On July 19, 2017 appellant, then a 50-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on July 17, 2017, while at work, a large, heavy box fell on her left leg, causing a knee injury. She did not stop work at the time of the injury.

In support of her claim, appellant submitted a July 19, 2017 urgent care report by Dr. A. Cohen.³ This report noted a history of an unspecified July 17, 2017 left knee injury, with increased symptoms after pushing boxes on July 19, 2017. On examination appellant had an antalgic gait favoring the left lower extremity, mild abrasions over the left patella and lateral aspect of the left knee, and an ecchymosis of the left anterior thigh. Her diagnoses were listed as left knee sprain, left knee abrasion, and contusion of left thigh and she was returned to full-duty work.

By development letter dated July 28, 2017, OWCP advised appellant of the type of additional factual and medical evidence needed to establish her claim. It provided her with a questionnaire and asked her to provide a detailed statement describing the July 17, 2017 employment incident, factual corroboration of the July 17, 2017 employment incident, and a report from her physician explaining how and why that incident would cause the claimed injury. OWCP afforded appellant 30 days to provide the necessary evidence.

In response, appellant submitted a July 17, 2017 urgent care report and a state compensation form signed by Serena Ling, a physician assistant. Ms. Ling related appellant's account of "working with heavy boxes earlier that day." Appellant also provided a July 17, 2017 work status note signed by Ms. Ling and countersigned by Dr. Cohen. Dr. Cohen prescribed a left knee brace and over-the-counter anti-inflammatory medication.

By decision dated September 8, 2017, OWCP denied the claim as fact of injury was not established. It found that the evidence of record was insufficient to corroborate that the claimed July 17, 2017 employment incident occurred as alleged. OWCP further found that appellant offered inconsistent accounts of how she was injured. On her claim form, appellant alleged that a heavy box fell on her leg, but stated in a July 19, 2017 examination that her symptoms were caused by pushing boxes.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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

³ Dr. Cohen's medical credentials could not be verified.

⁴ *Supra* note 1.

employment injury.⁵ 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.⁶

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether fact of injury has been established. First, an employee has the burden of proof to demonstrate the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁸

OWCP cannot accept fact of injury if there are such inconsistencies in the evidence as to seriously question whether the specific event or incident occurred at the time, place, and in the manner alleged, or whether the alleged injury was in the performance of duty,⁹ nor can OWCP find fact of injury if the evidence of record fails to establish that the employee sustained an “injury” within the meaning of FECA. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee’s statements must be consistent with surrounding facts and circumstances and her subsequent course of action.¹⁰ Such circumstances 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 cast doubt on an employee’s statements in determining whether he or she has established the claim.¹¹

ANALYSIS

The Board finds that appellant has not established that she sustained a traumatic left lower extremity injury in the performance of duty on July 17, 2017, as alleged.

The evidence of record casts serious doubt on the validity of appellant’s claim as the inconsistencies in her statements fail to establish that the July 17, 2017 employment incident occurred, as alleged.¹²

⁵ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁶ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁷ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁸ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁹ *H.H.*, Docket No. 18-0177 (issued May 17, 2018); *A.S.*, Docket No. 16-0735 (issued November 3, 2016); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *See Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995); *Joseph H. Surgener*, 42 ECAB 541, 547 (1991).

¹¹ *H.H.*, *supra* note 9. *See Constance G. Patterson*, 42 ECAB 206 (1989).

¹² *See W.M.*, Docket No. 17-0837 (issued December 27, 2017).

Appellant provided three different accounts of how she sustained the claimed left leg injury. In her July 19, 2017 Form CA-1, she alleged that, on July 17, 2017, a large box fell on her left leg. In seeking treatment, appellant provided inconsistent descriptions as to how the incident occurred.¹³ She asserted during a July 17, 2017 examination that she injured her leg while performing unspecified tasks with heavy boxes. Dr. Cohen's July 19, 2017 report related appellant's account of increased symptoms after pushing boxes at work that day. These vague, conflicting accounts of the mechanism of injury cast doubt on the validity of the claim.¹⁴ Therefore, the Board finds that the factual evidence of record is insufficient to establish the claimed July 17, 2017 employment incident occurred in the manner alleged.¹⁵

By development letter dated July 28, 2017, OWCP provided a questionnaire to appellant and requested that she submit additional factual and medical evidence explaining how she sustained an injury to her left lower extremity on the date in question. Appellant failed to submit the requested evidence.¹⁶ Therefore, the Board finds that there is insufficient evidence of record to meet her burden of proof to establish that she sustained an injury in the performance of duty, as alleged.¹⁷

On appeal appellant contends that the evidence of record is sufficient to establish her claim. As noted above, she did not submit sufficient factual evidence to establish that the claimed July 17, 2017 employment incident occurred as alleged.

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 did not meet her burden of proof to establish a traumatic left lower extremity injury in the performance of duty on July 17, 2017, as alleged.

¹³ See *A.M.*, Docket No. 08-1837 (issued February 9, 2009).

¹⁴ *H.H.*, *supra* note 9.

¹⁵ *Id.*

¹⁶ See *H.B.*, Docket No. 18-0278 (issued June 20, 2018).

¹⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 8, 2017 is affirmed.

Issued: September 12, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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