

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on September 1, 2017, as alleged.

FACTUAL HISTORY

On September 27, 2017 appellant, then a 49-year-old loss verifier/construction analyst, filed a traumatic injury claim (Form CA-1) alleging that, on September 1, 2017, she fell at her home/duty station office when her foot got caught on the printer cord while taking work-related paperwork from her printer to her desk while in the performance of duty. She reported injuries to her right hip, low back, buttocks, leg, left forehead, and spine. Appellant stopped work on September 18, 2017.

On September 27, 2017 the employing establishment issued appellant an executed authorization for examination and/or treatment (Form CA-16), which indicated that she was authorized to seek medical treatment for her September 1, 2017 multiple contusions on right hip, low back, buttocks, leg, left forehead, and spine.

In a September 27, 2017 emergency department note, Dr. Geertruida Kints, a Board-certified emergency medicine specialist, diagnosed lumbar back pain. She noted that appellant related falling and landing on her right hip on September 1, 2017. On September 17, 2017 appellant's back locked up when she went to get into her car. On September 19, 2017 she sought chiropractic treatment because her pain had worsened. A September 27, 2017 x-ray evaluation of appellant's lumbar spine x-ray revealed degenerative changes and a bone fragment involving the anterior superior endplate of L4. A computerized tomography (CT) scan revealed no acute fracture of the lumbar spine, but multilevel degenerative end-plate changes.

In an October 5, 2017 report, Dr. Maleshaea Hopkins an osteopath and family practitioner, reported that appellant was seen for head, back, leg, and right hip injuries which occurred one month prior. Appellant reported working in her home office on September 1, 2017 when, after retrieving a paper from the printer, she tripped over the printer cord and fell forward. She hit the right side of her head on the corner of the chair, her right hip on the floor/corner of the desk, and her back on the corner of the file cabinet. Appellant's right upper arm and face (left) then struck the floor. She indicated that she had a bruise on her head, her right hip, and buttocks area. Appellant noted reporting her injury to her supervisor and continuing to work for the next two weeks using a back brace and ice packs. On September 16, 2017 she had immobilizing back pain when she was seated at her desk and attempted reaching across it. On September 19, 2017 appellant went to the emergency room for an anxiety attack, but was so distraught, that she did not mention her September 1, 2017 fall. She also saw a chiropractor for treatment on September 18, 20, 22, and 25, 2017. Because her pain increased, she returned to the emergency room on September 27, 2017. Appellant indicated that she had been using a heating pad, topical pain relief creams, bed rest, and limited walking. She also reported not taking muscle relaxers due to fear of dependency. Dr. Hopkins diagnosed lumbago.

In an October 5, 2017 attending physician's report (Form CA-20), Dr. Hopkins noted appellant's September 1, 2017 trip and fall over a printer cable and diagnosed lumbago and neuritis. He checked a box marked "yes," indicating that the diagnosed conditions were caused or aggravated by the September 1, 2017 employment incident.

In an October 18, 2017 report, Dr. Jamie Varney, a Board-certified family practitioner, reported that appellant indicated that her symptoms were acute, traumatic, and began 38 “years” prior as a result of a fall on the hip which occurred at home. He provided examination findings and an assessment of trochanteric bursitis, unspecified hip. Dr. Varney indicated that the x-rays of the hip showed mild degenerative changes and spurring over the trochanter. He opined that appellant’s current hip symptoms were easily explained by normal wear and tear and inflammation. Dr. Varney also provided an assessment of intervertebral disc degeneration, lumbar region, as noted on the lumbar spine x-rays and CT of the lumbar spine. He opined that he did not suspect a significant acute injury to the lumbar spine. Dr. Varney noted that appellant had been evaluated over the years for musculoskeletal complaints and had previously been diagnosed with some psychiatric conditions, for which she no longer takes medication. A copy of the October 18, 2017 x-ray of bilateral hips, which were negative, was provided.

In an October 2, 2017 statement, M.K., a supervisor, noted that appellant’s duty station was in her home, that she had work-related equipment at her duty station, and that she was placed into paid status on August 30, 2017 in response to Hurricane Harvey. He indicated that appellant only needed the iPad and cell phone issued to her to complete her assignments. M.K. verified that on September 1, 2017 appellant had called her Team Lead, M.H., to report her fall. He noted that appellant continued to work 10 hours per day, 7 days per week and that she had requested leave on September 7 and 8, 2017 to move to Kentucky. In a September 17, 2017 e-mail to M.H., appellant advised that she had injured her back on September 16, 2017 when she turned in her desk chair. She was placed on leave status and went to the chiropractor. M.K. noted that e-mails from appellant also documented that she was recovering from gallbladder surgery and had many medical issues. He related that appellant’s chiropractor released her on September 25, 2017 for a six-hour return to work on September 25, 2017, but that she worked only four hours on September 26, 2017 and then stopped. M.K. also noted that appellant had indicated in a September 26, 2017 e-mail that she had pulled her back when opening a car door.

In a development letter dated October 23, 2017, OWCP informed appellant that the evidence of record was insufficient to establish her traumatic injury claim. It advised appellant of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded her 30 days to submit the necessary evidence.

In response OWCP received an October 20, 2017 admission/outpatient registration form and October 20, 2017 laboratory results.

On November 17, 2017 OWCP received a narrative statement from appellant. She indicated that, on September 1, 2017, she was working in her home office and after picking up the employer’s forms which she had printed, her foot got caught on the printer cord and she fell towards her desk, which was approximately five feet from the printer. She indicated that she had told her supervisor, M.K., on September 1, 2017 that she had fallen and was injured pretty badly. She noted that her supervisor told her to keep working the best she could. Appellant indicated that she had remained focused on her emergency response work and did not take care of her own needs until two weeks later when her back snapped and she had immobilizing pain. She thought a quick chiropractic adjustment would resolve the pain, but her back injury was worse than she thought. Appellant reported going to the chiropractor on September 18, 2017, and that she tried to return to work the following week, but that her pain escalated and she could not work. She noted that after her supervisor asked if it was work related, she remembered her September 1, 2017 fall. Appellant indicated that the delayed pain and injury response must have been caused by the fall and working

in a sedentary position for 11 to 12 hours per day until her back snapped and she was immobilized with pain. She reported that, after her fall on September 1, 2017, she had applied ice packs for the goose-egg injury on her left front forehead and low back, and used an elastic back support. Appellant noted using ice packs for a few days. She reported that the chiropractic treatment did not help and that the pain in her low back, hips, legs, arm, and head progressively worsened. Appellant also provided her recollection of the September 1, 2017 telephone conversation she had with M.H. She also clarified that she turned in her chair while working and injured her back on September 15, 2017, and that her back snapped with immobilizing pain the next day, September 16, 2017, when she attempted to get in her car.

By decision dated November 17, 2017, OWCP denied appellant's claim, finding that the September 1, 2017 incident occurred, as alleged. It noted that she had not responded to its development questionnaire.

OWCP continued to receive medical evidence. In a September 18, 2017 report, Dr. Steven M. Harrison, a chiropractor, noted that appellant had complaints of pain and stiffness in her low back and hip regions. Appellant reported no particular precipitating event for her low back and hip complaints, but indicated that they were an exacerbation of chronic complaints. Appellant reported that her job required prolonged sitting (10 to 12 hours per day). She also noted that she had gall bladder surgery approximately two months prior and had past multiple injuries from skiing and other activities. Dr. Harrison provided an assessment of sacroiliitis and performed a mild spinal manipulation.

Chart notes dated September 20, 22, 25, and 29, 2017 from Dr. Harrison were also provided. In his September 29, 2017 report, Dr. Harrison noted that appellant indicated that her complaints were from a work-related fall. He also noted that she tried to work on Tuesday, but her pain became so severe that after four hours she had to stop work. Dr. Harrison indicated that appellant had been seen in the emergency room on September 27, 2017. He reviewed the September 27, 2017 x-ray report of the lumbar spine and CT scan report of the lumbar spine. Dr. Harrison continued to diagnosis sacroiliitis. He also opined that appellant should not work.

On November 28, 2017 OWCP received a request for a telephonic hearing before an OWCP hearing representative. The telephonic hearing was held on April 12, 2018.

By decision dated May 25, 2018, an OWCP hearing representative affirmed the November 17, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶ 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, place, and in the manner alleged. Second, the employee must submit 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 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 her subsequent 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.⁹

OWCP's procedures address off-premises injuries sustained by workers at home as follows:

"Ordinarily, the protection of [FECA] does not extend to the employee's home, but there is an exception when the injury is sustained while the employee is performing official duties. In situations of this sort, the critical problem is to ascertain whether at the time of injury the employee was in fact doing something for the employing establishment. The official superior should be requested to submit a statement showing --

- (a) What directives were given to or what arrangements had been made with the employee for performing work at home or outside usual working hours;
- (b) The particular work the employee was performing when injured; and

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *T.H.*, 59 ECAB 388 (2008).

⁸ *C.R.*, Docket No. 18-1332 (issued February 13, 2019); *Gregory J. Reser*, 57 ECAB 277 (2005).

⁹ *See L.G.*, Docket No. 16-0856 (issued August 12, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

(c) Whether the official superior is of the opinion the employee was performing official duties at the time of the injury, with appropriate explanation for such opinion.”¹⁰

ANALYSIS

The Board finds that the case is not in posture for decision.

The Board has reviewed the evidence of record and finds that there is sufficient factual evidence to establish that appellant tripped over a printer cord and fell on September 1, 2017 at her home duty station.

The evidence reflects that appellant had reported the September 1, 2017 trip and fall to her supervisor on September 1, 2017, the day of the alleged injury. Appellant also offered an explanation in her November 16, 2017 response to OWCP’s questionnaire as to how the claimed September 1, 2017 injury occurred and why she forgot to report the incident when she sought treatment from her chiropractor approximately two weeks later. She related that she initially attempted treatment of her symptoms with ice, pain cream, elastic bands, etc., and focused on completing her emergency response work. However, appellant noted back pain while turning in her chair on September 15, 2017 and having immobilizing back pain the next day, for which she sought chiropractic treatment.

The medical evidence following appellant’s initial chiropractic care also provides a history of injury generally consistent with appellant’s account of events. This includes the September 27, 2017 emergency room report, and the medical evidence from Dr. Hopkins dated October 5, 2017 and from Dr. Varney dated October 18, 2017. Additionally, Dr. Harrison, the chiropractor, noted in his September 29, 2017 report that appellant indicated that her complaints stemmed from a work-related fall.

Based upon the evidence of record, the Board finds that appellant adequately described the circumstances of the September 1, 2017 employment incident. An employee’s statement alleging 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.¹¹ As such, the Board finds that the evidence of record is sufficient to establish that the claimed September 1, 2017 incident occurred in the performance of duty, as alleged.¹²

Given that appellant has established the September 1, 2017 incident, the question becomes whether this incident was sustained in the performance of duty and caused an injury.¹³ The record

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(f)(1) (August 1992); see *S.K.*, Docket No. 18-0478 (issued January 2, 2019); see also *S.F.*, Docket No. 09-2172 (issued August 23, 2010).

¹¹ See *R.E.*, *id.*; *Caroline Thomas*, 51 ECAB 451 (2000).

¹² *James R. Flint*, Docket No. 05-0587 (issued June 10, 2005).

¹³ See *Willie J. Clements*, 43 ECAB 244 (1991).

does not reflect that OWCP has developed the issue of whether the accepted incident occurred in the performance of duty, as required by its procedures.¹⁴

Thus, the Board will set aside OWCP's May 25, 2018 decision and remand the case for further development of the evidence.¹⁵ Following this and other such development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁶

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the May 25, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion.

Issued: April 15, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁴ *Supra* note 8.

¹⁵ *T.F.*, Docket No. 12-0439 (issued August 20, 2012).

¹⁶ The Board notes that the employing establishment issued a Form CA-16 authorizing medical treatment. A properly executed CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. 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. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *F.M.*, Docket No. 17-1547 (issued November 2, 2018); *S.G.*, Docket No. 18-0209 (issued October 4, 2018).