

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty on September 19, 2018, as alleged.

FACTUAL HISTORY

On September 27, 2018 appellant, then a 54-year-old security assistant, filed a traumatic injury claim (Form CA-1) alleging that, on September 19, 2018, she sustained a right forearm injury when a coworker pushed a “30-pound finger print machine” onto her arm while in the performance of duty. In a statement on the Form CA-1, R.A., a witness, noted that she heard the fingerprint machine fall on a desk, and that it could not have hit appellant’s arm. On the reverse side of the claim form, the employing establishment controverted the claim, indicating that there were conflicting statements regarding the incident. Additionally, it related that the fingerprint machine weighed 3.6 pounds, and not 30 pounds as appellant alleged.

In a development letter dated October 1, 2018, OWCP advised appellant of the deficiencies of her claim. It informed her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. In a separate development letter of even date, it notified the employing establishment of her traumatic injury claim. OWCP requested additional information regarding the alleged incident, and afforded it 30 days to submit the requested information.

In a report dated September 26, 2018, Nancy Shinozuka, a nurse, examined appellant and noted an impression of right arm strain.

In a supplemental statement dated October 18, 2018, appellant indicated that, on the date of the alleged incident, her coworker stormed into her office and pushed the fingerprint machine off her desk and down onto her arm. She related that she immediately called her supervisor, and that R.A. was a witness to the event. Along with her statement, appellant submitted a report dated September 26, 2018 from Stephen Robie, a physician assistant, who diagnosed muscle strain.

On October 30, 2018 the employing establishment controverted appellant’s claim. Appellant’s supervisor explained that appellant’s coworker asked appellant to provide her with a customer’s paperwork, and appellant refused. He noted that, in frustration, appellant’s coworker pushed a fingerprint machine which weighed about 3.6 pounds, and was perched on a ledge, about 13 inches onto appellant’s desk. Appellant’s supervisor further indicated that a witness, R.A., was present when the alleged incident occurred, was not in line of sight of the fingerprint machine, but heard the machine hit the desk and make a relatively loud noise. In addition, he noted that the office security camera recording had been reviewed, and it had been determined that appellant’s hand was not on the desk at the time the fingerprint machine was pushed from the ledge and onto the desk. Appellant’s supervisor also related that on the day the alleged incident occurred appellant denied that she was injured or hurt.

By decision dated November 9, 2018, OWCP denied appellant’s claim, finding that the evidence of record was insufficient to establish that the September 19, 2018 incident occurred as

alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 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, that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability 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 upon a traumatic injury or an occupational disease.⁵

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁶ Generally, fact of injury consists of two components that must be considered in conjunction with one another.⁷ The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁸ The second component is whether the employment incident caused a personal injury.⁹ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on September 19, 2018, as alleged.

The Board notes that there is no inconsistency in the evidence of record with regard to the time and place of the alleged incident. The Board finds, however, that there are inconsistencies in the evidence of record surrounding the manner in which the alleged incident occurred which cast doubt on appellant's description of the alleged incident. Specifically, statements from appellant's

³ *Supra* note 1.

⁴ 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁵ *D.T.*, Docket No. 18-0035 (issued May 10, 2019); *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).

⁶ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁷ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014).

⁸ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *D.T.*, *supra* note 5; *John J. Carlone*, 41 ECAB 345 (1989).

¹⁰ *D.T.*, *supra* note 5; *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

coworker and supervisor cast serious doubt on the validity of appellant's claim and overcome the probative value which would generally be afforded to her allegations.¹¹

In a statement on the Form CA-1, R.A., a witness, noted that, although she did not see, she heard the fingerprint machine fall on a desk, not appellant's forearm. In addition, appellant's supervisor noted that he had reviewed the office security camera footage, and had determined that appellant's hand was not on the desk at the time the fingerprint machine was pushed from the ledge and onto the desk. The Board finds that the uniformity of these statements corroborate that the fingerprint machine did not fall on appellant's arm, but rather fell onto the desk. Appellant has not provided evidence to indicate that R.A. or her supervisor were biased against appellant, such that their version of the incident should be discounted. The Board finds that these statements cast serious doubt on the validity of appellant's claims.¹²

The Board thus finds that appellant has not met her burden of proof to establish that the September 19, 2018 incident occurred in the performance of duty, as alleged. . Consequently, it is unnecessary to address the medical evidence of record.¹³

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 has not met her burden of proof to establish an injury in the performance of duty on September 19, 2018, as alleged.

¹¹ *S.M.*, Docket No. 18-1574 (issued March 27, 2019); *see D.P.*, Docket No. 18-0190 (issued May 22, 2018).

¹² *S.M.*, *id.*; *see A.B.*, Docket No. 14-0522 (issued November 9, 2015) (the Board found that a claimant did not establish fact of injury when statements by the claimant's coworker and supervisor indicated that the claimant staged a fall and were not consistent with the claimant's version of events).

¹³ *S.M.*, *id.*; *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 November 9, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 2019
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