United States Department of Labor
Employees' Compensation Appeals Board

T.M., Appellant	)	
and	)	**Docket No. 17-1195**
	)	**Issued: February 4, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Charlotte, NC, 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 May 8, 2017 appellant filed a timely appeal from a November 10, 2016 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 August 13, 2013, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On September 28, 2015 appellant, then a 54-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging an "[a]ggravation of herniated nodes, bulging discs, disc degeneration of the intervertebral nodes, and nerve damage down the arm causing severe carpal tunnel in both hands" as a result of falling out of a long life vehicle (LLV) on August 13, 2013, while in the performance of duty. She alleged that she fell out of her LLV onto the concrete and was stunned and disoriented. Appellant further indicated that she "had a complete numbness from the neck down and inflammatory factors for over two years and inflamed intestines and numbness and hernias and blown disc nodes." She did not stop work.

An April 27, 2015 memorandum from the employing establishment regarding a light-duty request indicated that appellant had been off work since March 19, 2014 and that it did not have a job available to accommodate her restrictions. Appellant advised that she had an upcoming doctor's appointment on April 30, 2015. The employing establishment indicated that it could revisit whether it had available work for appellant after she supplied her most recent medical documentation with her restrictions.

In an undated report, Dr. Douglas Chen, a Board-certified family practitioner, indicated that appellant had a series of injuries. He noted that she had sustained traumatic injuries at work due to a fall onto concrete, a fall down the stairs, an LLV slamming shut on her hand, and two dog attacks. Dr. Chen found that appellant had compromised disc damage and impingements, but continued to work lifting, bending, stooping, and carrying weight-bearing loads. He opined that this continued activity was why she presented with a total loss of spine alignment in the cervical, thoracic, lumbar, and sacral spine and why she had loss of complete balance and control, in addition to nerve, muscle, and tissue damage. Dr. Chen opined that appellant's injuries were caused by traumatic events she sustained while at work, in addition to repetitive lifting after sustaining the injuries. He noted that the door that slammed on her hand had worsened her carpal tunnel syndrome. Dr. Chen also diagnosed Schmori's nodes, which he noted were chronic and lifelong and would only worsen as appellant continued her current job.

In a separate undated report, Dr. Chen noted that appellant had been treated by nine physicians for her back and neck injuries. Appellant presented with numerous complaints including severe neuropathy, imbalance, and trouble walking for which Dr. Chen felt she needed further testing. She had three magnetic resonance imaging (MRI) scans and a computerized tomography (CT) scan over a course of six months. Dr. Chen reported that appellant was under the treatment of a Dr. Corrine Weaver, a chiropractor, from 2008 to 2009 for a workplace injury which resulted from her missing her footing on a stairway and going down approximately seven stairs, carrying 70 pounds of mail, and landing twisted on the railing. He also noted that in August 2013 appellant stepped out of her LLV, missed her step, and fell onto concrete. Appellant had reported that her fall had stunned her so badly she was disoriented and believed she blacked out, as it was a 100-degree day. Dr. Chen reiterated his opinion that appellant's preexisting conditions from her 2008 work injury had worsened over time with new diagnoses. He opined that her conditions were a direct result of her on-the-job traumatic injuries. Dr. Chen indicated that appellant had been diagnosed with bilateral carpal tunnel syndrome of moderate severity in the right and left hands. He opined that it stemmed from the preexisting upper neck injury and from the repetitive use of her hands at work.

Appellant submitted an August 13, 2013 narrative statement detailing an injury she sustained that day. She indicated that after she finished loading her LLV around 12:30 p.m., she went back into the Matthews Station to get her purse and lunch. Appellant stepped up into her LLV vehicle and realized she did not have her scanner. As she stepped back out of the truck, her foot wedged between the raised sidewalk and the pavement. Appellant fell quickly and landed hard on her back and neck. She stated that the fall "knocked the literal breath out of me." One of the Matthews Station supervisors saw the incident and ran over, asking if she was okay. Appellant responded, "I hope so, but I have such severe neuropathy, I just don't feel pain like other people." She noted that on an employing establishment supervisor's suggestion, she reported the incident to her immediate supervisor, but the supervisor responded that she did not have anyone to replace appellant on her route. Appellant informed her that she would try to work and that if she had a hard time she would call, but her supervisor responded, "Oh, no you won't." She indicated that she struggled to continue to work that day and for several weeks thereafter. Appellant went to urgent care three times the week after the incident. She described the incident as a hard falling blow on concrete and she asserted that it should have been reported and written up as she had asked. However, appellant's immediate supervisor berated her so much that she feared asking her for anything.

In an August 23, 2014 report, Dr. Chen noted that appellant had been seen in his office routinely since mid-March and had seen specialists. Appellant had diagnoses in her back of spondylosis, degenerative disc disease of the cervical spine, a bulging disc in five significant areas (mild-to-moderate), and carpal tunnel syndrome which was likely exacerbated by her upper cervical issues. Dr. Chen noted that he concurred with Dr. Weaver who noted that she should be on limited duty including no lifting more than 20 pounds.

On April 27, 2015 the employing establishment indicated that appellant had been off work since March 19, 2014, and it did not have a job to offer her to accommodate her restrictions.

In a May 4, 2015 report, Dr. Weaver diagnosed cervical subluxation at C1-7, degeneration of cervical intervertebral disc, lumbar subluxation at L1-5, and lumbago. She released appellant to work under the condition that she would hold her spinal alignment for more than four weeks, and if she was unable to do so, she would be placed on a restriction of no lifting over 20 pounds.

On July 13, 2015 Dr. Chen released appellant to full-time work without restrictions effective July 12, 2015.

In a March 11, 2016 report, Dr. Chen reiterated his medical diagnoses and opinions.

On May 4, 2016 Dr. Chen requested that appellant be allowed late arrivals at times due to her medical conditions.

In an October 5, 2016 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim as the evidence failed to establish that she actually experienced the incident alleged to have caused injury and that there was no diagnosis of a condition resulting from her claimed incident. It requested that she submit a medical report from an attending physician noting the history of her injury and treatment along with a statement of diagnosed conditions caused or aggravated by her alleged employment incident. OWCP further

requested that she complete a questionnaire which sought to develop the factual history of her alleged employment incident along with her pre- and post-injury medical status. Appellant was afforded 30 days to submit additional evidence and respond to the questionnaire. She did not respond.

By decision dated November 10, 2016, OWCP denied the claim because the evidence of record failed to establish that the injury or event(s) occurred as alleged.

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, that an injury[3] was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. The employee may establish that the employment incident occurred as alleged, but fail to establish that a medical condition related to the employment incident.[6]

An employee has the burden of proof to establish the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence. 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 his or her subsequent course of action.[7] 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. 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

[3] OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[4] *See T.H.*, 59 ECAB 388, 393 (2008).

[5] *J.R.*, Docket No. 18-1079 (issued January 15, 2019); *Michael E. Smith,* 50 ECAB 313 (1999).

[6] *Id.*

[7] *See Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995).

obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statement in determining whether a *prima facie* case has been established. 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.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on August 13, 2013, as alleged.

On September 28, 2015 appellant filed a traumatic injury claim alleging an injury due to a fall which she claimed had occurred in the performance of duty on August 13, 2013. As such, her claim was filed more than two years following the alleged employment incident. Appellant submitted medical evidence from Dr. Chen in support of her claim. However, the first report from Dr. Chen which notes the claimed August 13, 2013 employment incident is dated August 23, 2014, which is more than a year after the alleged employment incident had occurred.

OWCP notified appellant of the deficiencies of her claim, in an October 5, 2016 development letter, and afforded her 30 days to submit additional evidence and respond to its attached questionnaire. However, appellant did not provide a response to OWCP's inquiries or submit additional evidence in support of her traumatic injury claim.

While an employee's statement carries great probative value and will stand unless refuted by strong or persuasive evidence, appellant has not substantiated her alleged employment incident given the facts of this case.[9] Appellant's statements regarding the mechanism of injury were noted by OWCP to be unclear, and although afforded the opportunity to provide additional information, she did not provide a response.

Since appellant has failed to establish the first component of fact of injury, it is unnecessary to discuss whether she submitted medical evidence sufficient to establish that a medical condition existed and whether the condition was causally related to the employment factors alleged.[10] Thus, the Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty, on August 13, 2013, 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

[8] *See Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

[9] *F.S.*, Docket No. 12-0369 (issued September 20, 2012); *S.P.*, 59 ECAB 184 (2007).

[10] As appellant failed to establish that the claimed event occurred as alleged, it is not necessary to discuss the probative value of medical evidence. *See S.S.*, Docket No. 18-0242 (issued June 11, 2018); *S.J.*, Docket No. 17-1798 (issued February 23, 2018).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on August 13, 2013, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the November 10, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2019
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