United States Department of Labor
Employees' Compensation Appeals Board

J.R., Appellant	)	
	)	
and	)	**Docket No. 18-1079**
	)	**Issued: January 15, 2019**
U.S. POSTAL SERVICE, CARRIER ANNEX, Tampa, FL, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 1, 2018 appellant filed a timely appeal from a March 15, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees'

[1] After filing the current appeal, appellant also requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated July 17, 2018, OWCP's hearing representative denied appellant's June 13, 2018 request as untimely filed. It also denied a discretionary hearing noting that appellant could instead request reconsideration of OWCP's March 15, 2018 decision. The Board and OWCP may not exercise simultaneous jurisdiction over the same issue(s) in a case on appeal. 20 C.F.R. § 501.2(c)(3). Following the docketing of an appeal before the Board, OWCP does not retain jurisdiction to render a further decision regarding the issue(s) on appeal until after the Board relinquishes jurisdiction. *Id.* Thus, the July 17, 2018 OWCP decision denying appellant's request for an oral hearing is null and void. *See id.; Arlonia B. Taylor,* 44 ECAB 591 (1993); *Douglas E. Billings,* 41 ECAB 880 (1990).

Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

ISSUE

The issue is whether appellant has met her burden of proof to establish a left ankle sprain in the performance of duty on November 22, 2017, as alleged.

FACTUAL HISTORY

On November 22, 2017 appellant, then a 26-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that she was injured earlier that day. Although the Form CA-1 did not describe either the cause or nature of the injury, a "CA 1 Addendum" that accompanied the claim indicated that appellant was injured "when exiting vehicle." Appellant "twisted [her] left foot [and] fell." She claimed to have sprained her left foot.

On November 22, 2017 the employing establishment issued an authorization for examination and/or treatment, Form CA-16. The Form CA-16 noted that on November 22, 2017 appellant sprained her left ankle "stepping." That same day appellant received treatment at St. Joseph's Hospital emergency department. Dr. Timothy Holt, Board-certified in emergency medicine, prescribed a painkiller and provided instructions on walking with a crutch and using a boot. He advised that appellant could return to work without restrictions on November 27, 2017 and gave her discharge instructions for ankle sprain and lower extremity contusion. A November 22, 2017 left ankle x-ray revealed no acute findings.

In a report dated November 30, 2017, Dr. Roberto Rolon, a family practitioner, examined appellant for complaints of left ankle pain. Appellant told Dr. Rolon that she had fallen eight days prior, while at work, and had not returned since the incident. On examination Dr. Rolon observed an abnormal range of motion, swelling, and tenderness in the left ankle. He noted that x-rays were negative for a fracture. Dr. Rolon diagnosed a sprain of an unspecified ligament of the left ankle and recommended rest and icing the affected area. In a medical treatment/status reporting form of the same date, he diagnosed a left ankle sprain and noted that she could return to work so long as she was on seated duty only. Dr. Rolon checked a box indicating that the alleged injury for which treatment was sought was work related.

In a follow-up report dated December 7, 2017, Dr. Rolon examined appellant and noted normal range of motion of the left foot and ankle, as well as mild lateral swelling and lateral tenderness of the left ankle. He continued to recommend rest and icing the affected area. In a medical treatment/status reporting form of the same date, Dr. Rolon noted that appellant could return to work with restrictions of walking no more than 30 minutes per hour and no lifting,

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[2] 5 U.S.C. § 8101 *et seq.*

[3] 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 additional evidence for the first time on appeal. *Id.*

pushing, or pulling greater than or equal to 25 pounds. He noted that appellant required physical therapy as soon as possible.

In a follow-up report dated December 14, 2017, Dr. Rolon examined appellant and noted normal range of motion and no swelling in the left ankle, along with tenderness. Appellant told Dr. Rolon that the pain was much improved, but that she had not yet returned to work.

On December 21, 2017 Dr. Rolon referred appellant to physical therapy, listing a diagnosis of a left ankle ligament sprain.

In a medical treatment/status reporting form dated December 21, 2017, Dr. Rolon noted that appellant could return to work with restrictions of no lifting, pushing, or pulling of greater than or equal to 30 pounds.

OWCP also received physical therapy treatment records covering the period December 21, 2017 through January 10, 2018. The December 21, 2017 initial evaluation noted that appellant reported having sustained a work-related left ankle injury on November 22, 2017. Appellant indicated that she initially fell down some steps and injured her right leg, but continued to work. She further indicated that about 10 minutes later she was stepping out of a truck and rolled her left ankle.

In a development letter dated February 5, 2018, OWCP informed appellant that she had not submitted sufficient evidence to establish her claim. First, it noted that she had not submitted sufficient evidence to establish that she actually experienced an incident alleged to have caused injury, as there was no incident identified on her Form CA-1. OWCP also explained that appellant had not provided a physician's opinion as to how her unidentified injury resulted in a diagnosed condition. It afforded her at least 30 days to submit the requested information and to respond to OWCP's inquiries.

By decision dated March 15, 2018, OWCP denied appellant's claim. It found that she had not submitted the necessary factual evidence to establish that the November 22, 2017 incident occurred as described.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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[5] 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] *Supra* note 2.

[5] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of 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).

to the employment injury.[6] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.[7]

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 he or she actually experienced the employment incident at the time, place, and in the manner alleged.[8] 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.[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]

An employee has the burden of establishing the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.[11] An injury does not have to be confirmed by eyewitnesses to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[12] It is well established that a claimant cannot establish fact of injury if there are inconsistencies in the evidence that cast serious doubt as to whether the specific event or incident occurred at the time, place, and in the manner alleged.[13] 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, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.[14] However, 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.[15]

[6] *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003).

[7] *Michael E. Smith*, 50 ECAB 313 (1999).

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

[9] *John J. Carlone*, 41 ECAB 354 (1989).

[10] *Id. See Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[11] *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

[12] *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

[13] *Gene A. McCracken*, 46 ECAB 593 (1995); *Mary Joan Coppolino*, 43 ECAB 988 (1992).

[14] *Robert A. Gregory*, 40 ECAB 478, 483 (1989).

[15] *D.B.*, 58 ECAB 464, 466-67 (2007).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left ankle sprain in the performance of duty on November 22, 2017, as alleged.

Appellant has not provided a sufficient description of the time, place, and manner of her alleged left ankle injury.[16] On an addendum to her Form CA-1 she alleged an injury "when exiting vehicle, twist left foot and fell" on November 22, 2017. In a report dated November 30, 2017, appellant informed Dr. Rolon that she had fallen, but provided no additional details of the alleged incident. In a physical therapy note dated December 21, 2017, at her initial evaluation, she noted that she had fallen down steps at work and injured her right leg and subsequently injured her left leg exiting her vehicle. There are no specific details regarding how the alleged injury occurred.[17] The Board finds that appellant's description of the alleged traumatic incident is imprecise and vague and fails to provide specific details or evidence establishing that an incident occurred as alleged.[18] The information provided is insufficient to establish that an alleged injury occurred in the performance of duty.

In a development letter dated February 5, 2018, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. She was asked to respond to its factual development questionnaire and provide a detailed description of the alleged employment incident that she believed caused her injury. OWCP afforded appellant 30 days to submit this additional evidence. Appellant did not respond prior to the issuance of the March 15, 2018 OWCP decision. As such, the Board finds that she has not established that the November 22, 2017 incident occurred in the performance of duty, as alleged. Consequently, it is unnecessary to address the medical evidence of record.[19]

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.[20]

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[16] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[17] *S.A.,* Docket No. 18-0508 (issued July 10, 2018).

[18] *See C.M.*, Docket No. 17-0627 (issued June 28, 2017); *C.E.*, Docket No. 17-0106 (issued April 20, 2017).

[19] *See M.P.*, Docket No. 15-0952 (issued July 23, 2015); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[20] On November 22, 2017 the employing establishment issued a Form CA-16, authorization for examination and/or treatment. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. 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. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608, 610 (2003).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left ankle injury in the performance of duty on November 22, 2017, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 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