United States Department of Labor
Employees' Compensation Appeals Board

W.B., Appellant	)	
and	)	**Docket No. 18-1133**
	)	**Issued: January 8, 2019**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Austin, TX, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 14, 2018 appellant filed a timely appeal from an April 11, 2018 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 to consider the merits of the case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the April 11, 2018 decision OWCP received additional evidence. 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on October 17, 2017, as alleged.

FACTUAL HISTORY

On October 23, 2017 appellant, then a 49-year-old accounting technician, filed a traumatic injury claim (Form CA-1) alleging that she injured her left ankle, right knee, sustained a severe concussion, and a possible neck injury at 6:50 a.m. on October 17, 2017. She directed OWCP to see the attached e-mail dated October 23, 2017.[3] On the reverse side of the claim form, appellant's supervisor indicated that her regular work hours were 7:30 a.m. to 4:00 p.m., and he indicated that appellant was injured in the performance of duty.

A work release note dated October 31, 2017 from Dr. John P. Rodriguez, an orthopedic surgeon, indicated that appellant could not return to work as she would be unable to drive or walk until November 21, 2017. An employing establishment nurse indicated on November 8 and 13, 2017 that appellant was not working due to reported injuries to her left ankle, right knee, head, and neck when she turned her ankle on a sidewalk going into work and fell hitting her head. Appellant reported that she had lost consciousness and was diagnosed with a concussion.

In a development letter dated November 15, 2017, OWCP noted that when appellant's claim was received it appeared to be a minor injury that resulted in minimal time from work and was therefore administratively approved for a payment of a limited amount of medical expenses. It reported that the medical evidence addressing appellant's claim had not been formally considered and that additional factual and medical evidence was necessary to reach a decision on her claim. OWCP requested that appellant provide additional factual and medical evidence addressing the events of October 17, 2017 and any resulting conditions. It provided a questionnaire for her completion and afforded her 30 days to respond.[4]

In notes dated October, 31, November 9, and December 1, 2017, Dr. Rodriguez examined appellant due to right knee pain. He noted that appellant's symptoms began two weeks earlier while she was walking outside. Dr. Rodriguez reported that appellant was wearing a brace and that her right knee was very bruised and sensitive to touch. He diagnosed sprain of the medial collateral ligament of the right knee and nondisplaced fracture of the lateral malleolus of the left fibula. Dr. Rodriguez completed a form report on November 2, 2017 and indicated that appellant fell while walking on October 17, 2017, twisting her knee and ankle. He diagnosed right medial collateral ligament sprain, and left lateral malleolus fracture. Dr. Rodriguez indicated with a checkmark in a box marked "Yes" that he believed that appellant's condition was caused or aggravated by an employment activity.

[3] The record does not contain an e-mail of this date.

[4] Appellant provided a CD received by OWCP on November 22, 2017. On December 7, 2017 OWCP noted that the CD could not be scanned as it was cracked and unable to play.

By decision dated December 15, 2017, OWCP denied appellant's traumatic injury claim finding that she had not provided a factual description of how her injury occurred on her claim form or elsewhere.[5]

Appellant requested reconsideration on February 26, 2018 and provided additional form reports from Dr. Rodriguez dated December 14, 2017 and February 20, 2018 repeating his diagnosis and asserting that appellant fell and twisted at work causing her injuries. She provided January 2 and February 20, 2018 treatment notes from Dr. Rodriguez and resubmitted his previous treatment notes.

By decision dated April 11, 2018, OWCP denied modification of its December 15, 2017 decision, finding that she had not established that the October 17, 2017 employment incident occurred as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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 of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury. 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.[7]

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 and place, and in the manner alleged.

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, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden of proof in establishing 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 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. However, an

[5] Appellant requested an oral hearing before an OWCP hearing representative on December 18, 2017. However, she withdrew this request on January 5, 2018.

[6] *Supra* note 1.

[7] *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *Gary J. Watling*, 52 ECAB 357 (2001).

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 a traumatic injury in the performance of duty on October 17, 2017, as alleged.

Appellant did not describe how her October 17, 2017 employment incident occurred on her Form CA-1 and did not provide a narrative statement describing the circumstances during which her alleged employment incident occurred. She indicated on her CA-1 that that there was an attached email of October 23, 2017, however it was not received. The record variously indicates that appellant was injured at 6:50 a.m. on October 17, 2017, that she turned her ankle on a sidewalk going into work, that she was injured while she was walking outside, that she fell while walking on October 17, 2017 twisting her knee and ankle, and that appellant fell and twisted at work. There are no specific details regarding how the alleged injury occurred.[9]

On November 15, 2017 OWCP informed appellant of the type of evidence needed to support her claim that she fell during the performance of duty on October 17, 2017 and provided appellant a questionnaire for completion. It afforded her 30 days to respond. Appellant did not submit a further description of how the claimed employment incident occurred.[10] Without a detailed description of the circumstances of the alleged employment incident, appellant's claim lacks specificity regarding the claimed injury.[11] As noted above there are various descriptions of the alleged employment incident in the record, but no clear and detailed description from appellant providing the exact location, the mechanism of her injury, and whether she was in the performance of duty at the time the injury occurred. As discussed, to establish the factual component of her claim, she must provide a detailed description of any alleged work activity, the time that it occurred, and the surrounding circumstances.[12] In the absence of necessary factual evidence, appellant has not established her claim.[13]

The Board, therefore, finds that appellant has not met her burden of proof to establish her claim for compensation as she has not established that an employment incident occurred on October 17, 2017, as alleged. As appellant has not established an incident occurred as alleged, the medical evidence regarding causal relationship need not be addressed.[14]

[8] *L.F.*, Docket No. 17-0689 (issued May 9, 2018).

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

[10] *W.R.*, Docket No. 16-1251 (issued April 21, 2017).

[11] *Id.; M.J.*, Docket No. 17-1810 (issued August 3, 2018).

[12] *S.A., supra* note 9.

[13] *Id.*

[14] *See S.A., supra* note 9; *W.R., supra* note 10; *S.P.*, 59 ECAB 184 (2007).

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 a traumatic injury in the performance of duty on October 17, 2017, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2019
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board