

FACTUAL HISTORY

On July 21, 2017 appellant, then a 53-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that she experienced “nausea and sweating” at 7:00 a.m. on July 15, 2017 while in the performance of duty. On the reverse side of the form, the employing establishment indicated that her regular work hours were from 8:00 a.m. to 4:30 p.m., that she was not on the clock when she allegedly experienced vomiting and nausea which had occurred one hour before her shift. Appellant did not stop work. The employment establishment controverted the claim arguing that it was a “personal issue.”

In a July 15, 2017 narrative statement, appellant indicated that at approximately 8:00 a.m. she went into work and “it felt like everything was spinning.” She reported to her supervisor that she did not feel well, as her head and neck were in excruciating pain, she could not breathe, she felt weak, and her body would not stop trembling. Appellant stated that she could not stand up, and then her supervisor called 9-1-1 and she was taken to the hospital.

In an emergency room report dated July 15, 2017, Dr. Anthony J. Loffredo, a Board-certified emergency medicine physician, diagnosed vertigo.

In a development letter dated August 1, 2017, OWCP notified appellant of the deficiencies of her claim and requested that she submit additional factual and medical evidence in support of her claim. It requested a physician’s opinion as to how her injury resulted in her condition and asked her to complete an attached questionnaire. Appellant did not respond.

On July 28, 2017 the employing establishment controverted appellant’s claim, contending that her disability was not caused by a work-related injury.

By decision dated September 7, 2017, OWCP denied the claim, finding that appellant had not met her burden of proof to establish that the injury and/or events occurred on July 15, 2017 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,³ 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 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

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *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).

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.⁶ Generally, fact of injury consists of two components that must be considered in conjunction with one another. 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.⁷ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁸

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 subsequent course of action.⁹ The employee has not met her burden of proof of 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. 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.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty.

Appellant has not established the factual component of her claim as she failed to explain how and when her claimed injury occurred. In a development letter dated August 1, 2017, OWCP requested that she submit clarifying information describing how and when her claimed injury occurred. However, appellant did not complete and return the questionnaire and there is no consistent statement in the record describing the specific alleged employment-related incident and the time it occurred.¹¹ As she has not responded to the request for factual information, the Board finds that the record lacks sufficient factual evidence to establish specific details of how the claimed injury occurred.¹²

The Board further finds that because appellant failed to establish the first component of fact of injury, it is unnecessary to discuss whether she submitted medical evidence sufficient to

⁶ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁷ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

¹⁰ *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹¹ *See D.C.*, Docket No. 18-0082 (issued July 12, 2018).

¹² *See H.B.*, Docket No. 18-0278 (issued June 20, 2018); *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

establish that a medical condition existed and whether the condition was causally related to the employment factors as alleged.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.

ORDER

IT IS HEREBY ORDERED THAT the September 7, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 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

¹³ See *R.L.*, Docket No. 17-1670 (issued December 14, 2018); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997) (as appellant failed to establish that the claimed event occurred as alleged, it is unnecessary to discuss the probative value of medical evidence).