

FACTUAL HISTORY

On November 16, 2017 appellant, then a 42-year-old part-time clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 26, 2016 at 4:53 a.m., she injured her left foot while in the performance of duty. She attributed her injury to “just walking in, unloading a truck.” Appellant identified the injury as a torn ligament in her left foot. On the reverse side of the claim form, the employing establishment indicated that she was not working on the date of the alleged injury, and contested that she was injured in the performance of duty. The employing establishment did not indicate whether appellant continued to work.

On November 20, 2017 OWCP received documentation from the employing establishment indicating that appellant had taken annual leave on the alleged date of injury. Included was a note from Postmaster S.D., who wrote that appellant had taken annual leave every day between September 24 and 30, 2016, with the exception of September 27, 2016 when appellant worked for 2½ hours between 8:11 a.m. and 10:46 a.m. S.D. indicated that the employing establishment first became aware of appellant’s injury when presented with a work excuse note dated December 12, 2016 from Dr. Susan C. Jannou, a Board-certified podiatrist. She indicated that appellant was being treated for an acute plantar fasciitis with a partial tear. Dr. Jannou noted that appellant was confined to a walking boot, and advised that she be limited to sedentary work for a maximum of four hours per day.

A November 16, 2017 note from Dr. Daniel J. Howard, a Board-certified podiatric surgeon, limited appellant to sedentary work for a maximum of four hours per day.

In a development letter dated November 21, 2017, OWCP notified appellant of the type of additional factual and medical evidence needed to establish her traumatic injury claim. It attached a questionnaire that inquired about the alleged traumatic event itself and its immediate aftermath, the existence and nature of any preexisting or intervening conditions, and witnesses to the injury. OWCP also requested that appellant provide a narrative report from her attending physician, which included a diagnosis and an explanation as to how the reported work incident either caused or aggravated a medical condition. It afforded her 30 days to submit the requested information. No response was received.

By decision dated January 4, 2018, OWCP denied appellant’s traumatic injury claim, finding that the evidence of record was insufficient to establish that the September 26, 2016 incident occurred as alleged. As appellant had not established the factual element of her claim, OWCP found that she had not met the requirements for establishing an injury as defined by FECA.

On January 30, 2018 appellant, through counsel, requested a hearing before an OWCP hearing representative.

During the hearing held on July 19, 2018, appellant testified that on September 26, 2016 she was unloading trucks and pushing equipment when her foot started to cramp, and that while she was alone and there were no witnesses to her injury, she reported it promptly to the postmaster when she arrived. She further testified that she waited over a year and seven months to file a claim because she believed filing a claim to be discouraged, and that it would cause a rift with the employing establishment. When asked whether she was actually working on the date of the injury, appellant testified that the date of injury she provided, September 26, 2016, was the product of an

estimation by Dr. Jannou that her injury occurred about a week prior to the date of first treatment. When questioned about the discrepancies highlighted by the employing establishment as to the reporting of the injury and whether she could produce any person who either witnessed the injury or to whom she promptly reported the injury, she responded she would look into it.

In October 4, 2016 treatment notes, Dr. Jannou recorded appellant's statements that her foot pain worsens with activity, and that appellant had a similar problem with her right foot six years prior, which improved after three injections, but months later spontaneously tore her plantar fascia. She reported that appellant works on her feet most of the day, and that her pain started after a four-mile run. Dr. Jannou diagnosed bursitis of the left ankle and foot, plantar fascial fibromatosis, and pain in left foot.

A series of follow-up reports from Dr. Jannou dated from October 25, 2016 to April 29, 2017 repeat much of the patient history from the prior reports, and note the results of diagnostic studies taken within that period. The diagnoses include: (1) spontaneous rupture of other tendons, left ankle and foot; (2) plantar fascial fibromatosis; (3) other acquired deformity of the left foot, and (4) pain in the left foot. Dr. Jannou prescribed a walking boot with a transition to orthotic footwear, physical therapy, and strengthening exercises. These reports also include her recommendations regarding the limitations on appellant's ability to work.

In the April 26, 2017 follow-up report, Dr. Jannou reported that two weeks prior, appellant felt a sudden sharp pain/cramp at the distal medial aspect of the plantar fascia and had returned to wearing the walking boot.

An April 28, 2017 MRI scan taken on appellant's left foot revealed an abnormal appearance of the plantar fasciitis with further progression of high grade partial tearing with a macerated appearance of the central cord at the calcaneal attachment with surrounding soft tissue edema, and few remaining intact fibers of the central cord attachment inferiorly.

In a July 2017 request under the Family and Medical Leave Act (FMLA), Dr. Howard placed the approximate date of injury as October 2016, and noted that he treated appellant on May 11 and June 15, 2017. He listed the diagnosis as a high grade plantar fascial tear of the left foot, and noted that she could not stand or walk on her left foot. Dr. Howard limited appellant to sedentary work until further notice.

In a March 29, 2018 visit summary, Dr. Howard noted that appellant had left foot pain in her heel and Achilles, which had improved. The history of patient injury states that the condition is made worse by her job, hard floor, extended hours, and duties. Appellant was diagnosed with: plantar fasciitis, metatarsalgia of the left foot, contracture of the left ankle, and, contracture of the right ankle. She was prescribed physical therapy and nonsteroidal anti-inflammatory drugs.

By decision dated September 24, 2018, the hearing representative found that the factual evidence of record was insufficient to establish that the alleged incident occurred as described. He noted that appellant had not responded to OWCP's request for a detailed explanation of the work incident, and despite a request at the hearing that appellant produce evidence to refute the discrepancies highlighted by the employing establishment, appellant failed to do so. The hearing representative found appellant had satisfied neither component of fact of injury. He found that the inconsistencies produced serious doubt as to appellant's factual allegations concerning the

incident, and while medical diagnoses were provided, nothing in the record connected the diagnoses to the alleged incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 of FECA,⁴ 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.⁵ 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.⁶

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.⁷ Generally, fact of injury consists of two components that must be considered in conjunction with one another. 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's statement 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 Moreover, an injury does not have to be confirmed by eyewitnesses.¹¹ The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met 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.¹² Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain

³ *Id.*

⁴ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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

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

⁹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *R.T.*, Docket No. 08-0408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

¹¹ *L.A.*, Docket No. 17-0138 (issued April 5, 2017).

¹² *Id.*

medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.¹³

ANALYSIS

The Board finds that appellant has not established that the September 26, 2016 incident occurred in the performance of duty as alleged.

On her Form CA-1, appellant alleged that she injured her left foot from "just walking in and unloading a truck" on September 26, 2016 at 4:53 a.m. In a development letter dated November 21, 2017, OWCP advised her of the need for factual information. It specifically inquired about the circumstances of the alleged employment incident, which had only been vaguely described in her Form CA-1. The letter's attached questionnaire included questions regarding the alleged traumatic event itself and its immediate aftermath, the existence and nature of any preexisting or intervening conditions, and witnesses to the injury. Appellant did not respond.

During the hearing, in response to the employing establishment's contention that appellant was on leave on the date of the alleged injury, she testified that the date she listed was actually a rough estimate provided to her by Dr. Jannou, who estimated that her plantar fascia had been torn for approximately one week. Moreover, even though appellant claimed that she promptly reported the incident on the date of its occurrence, S.D., appellant's postmaster who signed the Form CA-1, stated that the employing establishment was first made aware of the condition in mid-December 2016. While appellant stated that she would look into producing witnesses who either observed the incident or to whom she reported the incident, she produced none.

As noted, the employee's statement must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met 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.¹⁴

The medical evidence of record also offers no support to the occurrence of the incident as alleged. In successive reports beginning on October 4, 2016, Dr. Jannou reported that appellant worked on her feet and that the pain started after a four-mile run. She offered no opinion as to the cause of appellant's injury, and noted only a temporal relationship between her condition and a four-mile run, presumptively unrelated to her employment. Neither Dr. Jannou nor Dr. Howard mentioned a workplace incident.

The fact that appellant did not work on the sworn-to date of the alleged injury is a serious contradiction of her factual account of the workplace incident. Appellant testified that the date of injury was September 26, 2016. When the employing establishment contended that she was on annual leave on that date, appellant responded only that the date was a rough estimation from

¹³ *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

¹⁴ *L.A.*, *supra* note 9.

Dr. Jannou. Second, her hearing testimony that she reported the incident on the date of injury to S.D. is contradicted by S.D.'s notations on the Form CA-1 and in S.D.'s letter to OWCP.

As such, the Board finds appellant has not met her burden of proof to establish the factual component of fact of injury. Therefore the Board need not address the medical component of fact of injury.¹⁵

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 26, 2016 as alleged.

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁵ *Id.*