

**United States Department of Labor
Employees' Compensation Appeals Board**

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| M.S., Appellant |) | |
| |) | |
| and |) | Docket No. 18-1658 |
| |) | Issued: May 2, 2019 |
| U.S. POSTAL SERVICE, POST OFFICE, |) | |
| Beverly Hills, CA, Employer |) | |
| |) | |

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 29, 2018 appellant filed a timely appeal from an August 13, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 a traumatic injury in the performance of duty on April 9, 2018, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the August 13, 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*

FACTUAL HISTORY

On June 7, 2018 appellant, then a 54-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that, on April 9, 2018, she injured her back while in the performance of duty.

In an April 9, 2018 work status report form and report, Dr. John Barone, an examining physician specializing in occupational medicine, diagnosed acute appendicitis and estimated one day of temporary total disability. In the April 9, 2018 report, he indicated that appellant related feeling something push on her belly while lifting tubes full of mail and that, when the pain did not go away, she notified her supervisor. The supervisor reported that appellant noticed lower abdominal pain while she was at work and there was no prior history of acute or cumulative trauma to the abdomen.

Dr. Barone, in follow-up reports dated April 10, 17, May 8, June 6, and 19, 2018, provided physical examination findings. He diagnosed lumbar strain on April 10 and June 19, 2018 and lower back muscle, fascia, and tendon strain on April 17, May 8, and June 6, 2018. Under history of injury, Dr. Barone noted an April 9, 2018 injury date, an improving condition, and that appellant was on modified duty. Appellant complained of lumbosacral area pain which she described as sharp, intermittent, and moderately severe. Dr. Barone detailed appellant's job duties, length of employment, and hours worked. On June 19, 2018 he reviewed x-ray interpretations of the lumbar and hip areas, which he found to be normal.

By development letter dated July 13, 2018, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to provide the requested evidence. In response to its development letter, appellant submitted evidence including reports dated June 27, July 18, and 26, 2018 from Dr. Barone who noted that she was seen for a follow-up on an April 9, 2018 injury and that her condition was improving as expected. She continued having complaints of limited back range of motion, radiation of back pain, intermittent lumbosacral area pain which she described as sharp and moderately severe. Examination findings were unchanged from prior reports. Dr. Barone diagnosed lumbar radiculopathy.

By decision dated August 13, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that an injury occurred on April 9, 2018, as alleged.

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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the

³ *Supra* note 1.

employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an 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.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 medical evidence to establish that the employment incident caused a personal injury.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on April 9, 2018, as alleged.

On her Form CA-1, appellant noted that on April 9, 2018 she sustained a strain to her middle back. No other information or statement clarifying what employment duties were involved to have caused her claimed back injury on April 9, 2018 was provided. Appellant did not identify specific employment factors alleged to have caused her condition. She failed to provide any description or details of the alleged April 9, 2018 incident sufficient to determine the circumstances surrounding her injury.⁹

The only explanation provided pertaining to the claimed September 19, 2017 traumatic incident was information provided by Dr. Barone who noted that appellant felt something push on her belly while lifting tubes full of mail.

In a development letter dated June 15, 2018, OWCP informed appellant that the evidence of record was insufficient as she had not sufficiently described the employment factors alleged to have caused her injury. It asked her to describe those alleged work factors in detail, but she did not respond to the request for additional specific factual information.¹⁰ Accordingly, as she failed to present a clear factual statement identifying specific employment factors or conditions alleged

⁴ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ B.F., Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

⁷ D.B., 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁸ C.B., Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

⁹ K.S., Docket No. 17-2001 (issued March 9, 2018).

¹⁰ K.S., *id.*; *see also K.W.*, Docket No. 16-1656 (issued December 15, 2016).

to have caused or contributed to her claimed medical condition, appellant has not met her burden of proof.¹¹

As the evidence of record does not sufficiently describe the employment incident and circumstances surrounding her alleged injury, the Board finds that appellant has not established that the traumatic injury occurred in the performance of duty on April 9, 2018, 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on April 9, 2018, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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

¹¹ See *D.C.*, Docket No. 18-0082 (issued July 12, 2018); *D.D.*, 57 ECAB 734 (2006).