

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

S.W., Appellant	)	
	)	
and	)	Docket No. 19-1447
	)	Issued: April 24, 2020
DEPARTMENT OF THE TREASURY,	)	
INTERNAL REVENUE SERVICE, Fresno, CA,	)	
Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On June 24, 2019 appellant, through counsel, filed a timely appeal from a May 7, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish that a traumatic injury occurred in the performance of duty on June 13, 2018, as alleged.

## FACTUAL HISTORY

On June 22, 2018 appellant, then a 39-year-old small business/self-employed automated collection systems frontline manager, filed a traumatic injury claim (Form CA-1) alleging that while on travel status at 5:15 p.m. on June 13, 2018 she injured her right ankle, foot, and leg, and her left elbow, knee, and leg when she fell while in the performance of duty. She explained that she fell as she was leaving a work-related leadership training conference and approaching her car in a garage. Thereafter, appellant developed severe swelling and bruising in her right ankle and foot. On the reverse side of the claim form, the employing establishment acknowledged that she was injured in the performance of duty and noted that she first received medical care on the date of injury.

A June 13, 2018 emergency department after visit summary indicated that appellant was seen by Dr. Tamela Zimmerman, an emergency medicine specialist, for ankle and wrist injuries due to a mechanical fall. Dr. Zimmerman diagnosed acute right ankle pain, acute left knee pain, and left elbow pain.

In a July 17, 2018 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her traumatic injury claim. It noted that the medical evidence submitted only contained a diagnosis of pain, but pain was not a valid diagnosis. OWCP requested that appellant submit a comprehensive narrative medical report from a qualified physician that included a diagnosis and an opinion, supported by medical rationale, addressing how the claimed employment incident caused or aggravated a medical condition and attached a questionnaire for her completion. It afforded her 30 days to submit the necessary evidence.

In a separate July 17, 2018 development letter, OWCP requested additional information from the employing establishment regarding the circumstances of appellant's June 13, 2018 injury. It advised the employing establishment of the type of factual evidence needed and noted that, in the absence of a full reply, it may accept her allegations as factual. OWCP afforded the employing establishment 30 days to respond.

Additional June 13, 2018 emergency department records signed by Dr. Zimmerman indicated that appellant was admitted to the hospital at 6:39 p.m. and presented with right ankle, right foot, left knee, and left elbow pain from a fall that occurred less than an hour prior. Appellant complained that she had twisted her right ankle and landed on her left knee and left elbow. A physical examination revealed that her right ankle, right foot, left knee, and left elbow were tender, and a small abrasion to her left knee was noted. The records indicated that x-rays were taken of appellant's right foot, left knee, and left elbow, and that her symptoms were consistent with a right ankle sprain and left elbow and knee contusions.

June 19, 2018 progress notes from Dr. Joshua Hixon, a Board-certified family practitioner, indicated that appellant sprained her right ankle on a business trip when entering a garage on

June 13, 2018 and was complaining of lingering right ankle and left elbow pain from the incident. Appellant's right ankle was tender around the medial malleolus and very tender around the lateral malleolus and the talofibular ligament. It was also swollen, had a limited range of motion, and she felt pain with any motion. Appellant's left elbow was tender around the olecranon and at the radial head, and she experienced pain with flexion past 90 degrees. Dr. Hixon concluded that she had injuries to her left elbow and right ankle.

An August 1, 2018 duty status report (Form CA-17) bearing an illegible signature noted appellant's date of injury as June 13, 2018 and indicated that when she was leaving work she fell in a garage, injuring her right ankle, right foot and left elbow. Clinical findings included right ankle pain and swelling, and she was diagnosed with a right ankle sprain.

By decision dated August 22, 2018, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the June 13, 2018 incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 18, 2018 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

OWCP subsequently received additional evidence. Unsigned progress reports dated August 1 and 27 and September 25, 2018 noted appellant's June 13, 2018 history of injury and her continuing right ankle pain.

In an October 30, 2018 operative report, Dr. David West, an osteopathic physician specializing in orthopedic surgery, indicated appellant's diagnosis as chronic instability to the lateral ligament complex in her right ankle. On that date he performed an open repair of her lateral ligament complex in her right ankle.

In a December 16, 2018 narrative statement, appellant explained that from June 11 to 15, 2018 she was on travel in Covington, Kentucky for mandatory leadership training for her new position as a frontline manager for the employing establishment. On June 11, 2018 she was advised by the employing establishment to park in the parking garage next to the location of her training. Appellant related that on June 13, 2018 at 5:00 p.m. she was walking to her vehicle with the intention of driving back to her hotel for the evening. She walked into the parking garage and took five steps away from the sidewalk when her right ankle rolled under her, causing her to fall to the ground. Appellant tried to break her fall by putting her left hand out. She further related that she did not trip, nor did she notice anything that could have caused her to fall. Appellant drove to her hotel and, once she arrived, she could barely make it to her room due to severe pain in her right ankle. She called a colleague to ask for a ride to the emergency room. Appellant also detailed the subsequent medical treatment of her injuries. She additionally noted that her June 13, 2018 fall aggravated a preexisting neck condition, as she began to experience neck pain after the incident.

OWCP also received progress reports from Dr. James Fish, an osteopathic physician specializing in orthopedic surgery, dating from May 7, 2018 relating to appellant's cervical spine

stenosis and cervicalgia. In his August 29, 2018 report, Dr. Fish related that she had fallen at work on June 13, 2018 and her cervical symptoms had worsened since that time.

During the oral hearing, held on February 15, 2019, appellant reiterated her prior description of her fall on June 13, 2018.

By decision dated May 7, 2019, OWCP's hearing representative affirmed OWCP's August 22, 2018 decision, finding that the evidence of record was insufficient to establish that the injury occurred in the performance of duty on June 13, 2018, as alleged.

### LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup> The second component is whether the employment incident caused a personal injury.<sup>9</sup> An employee may establish that an injury occurred in the performance of duty as alleged, but fail

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<sup>3</sup> *Id.*

<sup>4</sup> *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).

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

<sup>6</sup> *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).

<sup>7</sup> *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

<sup>8</sup> *See M.F.*, Docket No. 18-1162 (issued April 9, 2019); *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). *Id.*

to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>10</sup>

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.<sup>11</sup> The employee has not met his or 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. 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 serious doubt on an employee's statements in determining whether a 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.<sup>12</sup>

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.<sup>13</sup> Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>14</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>15</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>16</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant indicated on her claim form filed on June 22, 2018 that at 5:15 p.m. on June 13, 2018 as she was leaving an employing establishment leadership training session and entering a garage she fell, injuring her right ankle, foot, and leg and her left elbow, knee, and leg. The claim

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<sup>10</sup> *D.D.*, Docket No. 18-0648 (issued October 15, 2018); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>11</sup> *See M.F.*, *supra* note 8; *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

<sup>12</sup> *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

<sup>13</sup> *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>14</sup> *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>15</sup> *L.D.*, *id.*; *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>16</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

form was signed by the employing establishment, which acknowledged that appellant was injured in the performance of duty and certified that the information furnished by her was true to the best of its knowledge.

June 13, 2018 emergency department records indicated that appellant was admitted at 6:39 p.m. and presented with right ankle, right foot, left knee, and left elbow pain from a mechanical fall that occurred under an hour ago where she twisted her right ankle and landed on her left knee and left elbow. June 19, 2018 progress notes from Dr. Hixon indicated that she sprained her right ankle on a business trip when entering a garage on June 13, 2018 and had lingering ankle and elbow pain from the incident.

In her December 16, 2018 statement, appellant related that on June 13, 2018 at 5:00 p.m. she walked into the parking garage and her right ankle rolled under her, causing her to fall to the ground. She tried to break her fall by putting her left hand out. Additionally, during the February 15, 2019 oral hearing appellant testified that on June 13, 2018 she was at a training required by her employing establishment when she turned into a garage and fell. She stated that her right ankle and left hand struck the ground, and she experienced right ankle pain, left knee pain, and left elbow pain.

The Board finds that appellant has provided a consistent account of the time, place, and manner of injury. Appellant consistently described a fall in the evening of June 13, 2018 as she was walking into a parking garage where she principally injured her right ankle and left elbow. She provided a singular account of the mechanism of injury, and her actions surrounding the incident corroborate her description.<sup>17</sup> As well, the employment establishment acknowledged that appellant was in performance of duty at the time of her fall. The Board thus finds that she has established that the June 13, 2018 employment incident occurred in the performance of duty, as alleged.

As appellant has established that the June 13, 2018 employment incident factually occurred, the question becomes whether this incident caused her diagnosed conditions.<sup>18</sup> The Board will therefore remand the case for consideration of the medical evidence on the issue of causal relationship. Following such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish an injury causally related to the accepted June 13, 2018 employment incident.<sup>19</sup>

### CONCLUSION

The Board finds that the case is not in posture for decision.

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<sup>17</sup> See *G.G.*, Docket No. 19-0490 (issued October 3, 2019).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 7, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 24, 2020  
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board