

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

_____)	
L.T., Appellant)	
)	
and)	Docket No. 19-1902
)	Issued: April 8, 2020
U.S. POSTAL SERVICE, KANSAS CITY)	
NETWORK DISTRIBUTION CENTER,)	
Kansas City, KS, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 16, 2019 appellant filed a timely appeal from an August 13, 2019 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty, as alleged.

FACTUAL HISTORY

On June 17, 2019 appellant, then a 48-year-old parcel post distributor (machine), filed an occupational disease claim (Form CA-2) alleging that she sustained medical conditions in her legs,

¹ 5 U.S.C. § 8101 *et seq.*

feet, and back due to factors of her federal employment. She noted that she first became aware of her conditions on August 15, 2018 and realized their relation to factors of her federal employment on April 1, 2019. Appellant did not stop work.

In a development letter dated July 2, 2019, OWCP advised appellant that it required additional factual and medical evidence to establish her claim. It attached a questionnaire, requesting that she provide a detailed description of the employment factors she believed contributed to her conditions, including a description of her required duties, relevant dates, and how often she performed those duties. OWCP also requested that appellant submit a comprehensive narrative medical report from her treating physician that included a diagnosis and a reasoned explanation as to how specific work factors caused or contributed to the diagnosed condition(s). In a separate development letter of even date, it requested that the employing establishment provide additional information regarding appellant's occupational disease claim, including comments from a knowledgeable supervisor regarding the accuracy of appellant's statements, and a copy of appellant's position description and physical requirements of her position. OWCP afforded both parties 30 days to respond. No response was received from either party.

By decision dated August 13, 2019, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish the alleged factors of her federal employment as she described. As such, it concluded that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim, including 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,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

OWCP's regulations define an occupational disease as a condition produced by the work environment over a period longer than a single workday or shift.⁶ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit:

² *Supra* note 1.

³ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ 20 C.F.R. § 10.5(q).

(1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁷

The employee's burden of proof includes the submission of a detailed description of the employment factors or conditions, which he or she believes caused or adversely affected a condition for which compensation is claimed.⁸

ANALYSIS

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

To establish a claim for compensation in an occupational disease claim, an employee must submit a statement, which identifies the factors of employment believed to have caused his or her condition.⁹ Appellant did not respond to OWCP's July 2, 2019 development letter, requesting that she provide detailed information concerning the employment factors she believed contributed to her claimed conditions and its accompanying questionnaire.¹⁰

The only explanation that appellant provided pertaining to her occupational disease claim was the limited statement she provided in her Form CA-2 wherein she indicated that the nature of her injury consisted of nerve pain in her legs, feet, and back. However, appellant did not provide a description of the specific employment-related factors, which she believed contributed to her conditions or the circumstances and mechanisms of her injuries.¹¹ Thus, the Board finds that this evidence is insufficiently detailed to meet appellant's burden of proof to establish the factual basis of her claim.¹²

The Board finds that, because appellant has not established an injury in the performance of duty, it is unnecessary to discuss whether the medical evidence of record is sufficient to establish a medical condition causally related to factors of her federal employment.¹³

⁷ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *T.W.*, Docket No. 18-0788 (issued July 22, 2019); *J.C.*, Docket No. 16-1663 (issued January 18, 2017); *Lori A. Facey*, 55 ECAB 217 (2004).

⁹ *E.V.*, Docket No. 19-0447 (issued June 25, 2019); *H.O.*, Docket No. 17-1176 (issued November 27, 2018).

¹⁰ *A.H.*, Docket No. 19-0566 (issued August 22, 2019); *D.C.*, Docket No. 18-0082 (issued July 12, 2018).

¹¹ *L.W.*, Docket No. 19-0196 (issued July 2, 2019); *D.C., id.*; *D.M.*, Docket No. 18-0335 (issued June 18, 2018).

¹² *K.M.*, Docket No. 19-0367 (issued June 26, 2019).

¹³ *J.S.*, Docket No. 19-1392 (issued February 13, 2020).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of the Board's 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 that she sustained an injury in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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