

ISSUE

The issue is whether appellant has met her burden of proof to establish that an injury occurred in the performance of duty on October 24, 2018, as alleged.

FACTUAL HISTORY

On November 30, 2018 appellant, then a 32-year-old advanced medical support assistant, filed a traumatic injury claim (Form CA-1) alleging that on October 24, 2018 at 1:30 p.m. she was working in room 202 of the employing establishment when she was bit by a spider on the right ankle while in the performance of duty. She explained that the spider bite became infected and she had to undergo surgery to drain the infected bite. On the reverse side of the claim form, the employing establishment acknowledged that appellant was injured in the performance of duty on October 24, 2018 and that its knowledge of the facts about her injury agreed with her statements.⁴ It noted that appellant stopped work on November 1, 2018 and returned to work on November 16, 2018.

An October 25, 2018 employing establishment health unit form report indicated that appellant was seen at 2:20 p.m. on October 25, 2018 at which time she noted that on October 24, 2018 at 1:30 p.m. in room 202 something bit her right lower leg and she felt a stinging sensation. Appellant noted that the bite was still oozing and still stung. The report indicated that the site and surrounding drainage was visualized. It noted that there was a 4 millimeter (mm) area of open skin and a 5mm x 5mm area surrounding it. The report indicated that appellant received treatment and could return to work without restrictions on that day. The form report was otherwise illegible and bore an illegible signature of an advanced practice registered nurse.

Hospital notes signed by Dr. Samrina Hassan, Board-certified in internal medicine, indicated that appellant was admitted on October 30, 2018 and presented with a week-long history of pain and swelling in her lower right leg. Appellant provided a history that she had felt a bite on her leg while at work, and that she subsequently noticed three small black spiders on her office floor. Dr. Hassan noted that she met systemic inflammatory response syndrome criteria upon admission, and identified a subcutaneous edema/fluid deep in her wound just above her ankle. She further noted that appellant's right lower extremity cellulitis was addressed and that her spider bite and right leg edema were active problems.

Hospital notes from October 30, 2018 signed by Dr. Jason Bruns, an osteopath Board-certified in emergency medicine, indicated that appellant noted that approximately five days prior she was bit by an insect and was initially treated by a nurse practitioner at her employing establishment who cleaned her wound and provided her with antibiotic ointment. Subsequently, the redness and pain increased and she developed swelling.

Additional October 30, 2018 hospital notes indicate that appellant was seen by Dr. David Williams, Board-certified in family medicine. The notes indicated that appellant reported that a week prior she felt a bite on her leg, while she was at work, and that she subsequently noticed three black baby spiders in her office. She further explained that her office was near an outside door

⁴ On October 24, 2018 appellant signed the employing establishment's release of information form and indicated that on that date she was bit by a spider on her lower right ankle.

and that insects were often seen inside the door. Appellant indicated that she was unsure of the type of spider that bit her, but thought it was a small baby spider. She was initially seen by a nurse practitioner at her employing establishment for redness, swelling, and an open wound area on her right leg, and was then evaluated in the emergency room when her pain worsened, she experienced chills, and a lack of appetite. Dr. Williams diagnosed cellulitis, which he noted was possibly secondary to an infection from her spider bite, leg edema, and systemic inflammatory response syndrome.

October 31, 2018 hospital notes by Dr. Preeti Sood, Board-certified in internal medicine, indicate that appellant presented on October 30, 2018 with right lower extremity pain, a wound, and cellulitis. Appellant's history of a spider bite at work was reiterated. Dr. Sood also noted that she advised that multiple baby spiders had been killed in her office.

In January 4, 2019 progress notes, Dr. Thuan Nguyen, a Board-certified plastic surgeon, noted the history of injury and that on November 1, 2018 appellant underwent an incision/irrigation and debridement of her right lower extremity. He diagnosed a spider bite wound, a right leg edema, abscess of the lower right leg, and cellulitis of the right lower extremity. Dr. Nguyen indicated that she had a nonhealing right lateral ankle wound from a possible spider bite. In a January 27, 2019 operative note, he indicated that he performed a complex closure of appellant's right ankle wound and an excision of her right ankle spider bite wound.

In a February 12, 2019 development letter, OWCP advised appellant that when her claim was first received it appeared to be a minor injury that resulted in minimal or no lost time from work. It informed her that her claim would be formally adjudicated because her medical bills exceeded \$1,500.00. OWCP advised appellant of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. It afforded her 30 days to submit the necessary factual and medical evidence.

In a February 12, 2019 development letter to the employing establishment, OWCP requested information regarding the circumstances of appellant's alleged injury. It afforded the employing establishment 30 days to submit the requested evidence.

By decision dated March 19, 2019, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the October 24, 2018 incident occurred, as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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,⁶ 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

⁵ *Supra* note 2.

⁶ *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).

related to the employment injury.⁷ 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.⁸

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.⁹ 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.¹⁰ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.¹¹

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 her subsequent course of action.¹² The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹³ 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 statements 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.¹⁴

ANALYSIS

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

On her November 30, 2018 Form CA-1, appellant alleged that on October 24, 2018 at 1:30 p.m. a spider bit her right ankle while she was at work in room 202 at the employing establishment. It was acknowledged by the employing establishment that she was injured in the performance of duty on October 24, 2018 and it stated that its knowledge of the facts regarding her injury agreed

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

⁸ *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).

⁹ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

¹⁰ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹¹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹² *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

¹³ *See E.C.*, Docket No. 19-0943 (issued September 23, 2019).

¹⁴ *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

with her statements. The employing establishment also noted that it had received notice of appellant's injury on the date of incident, October 24, 2018.

Appellant additionally submitted an October 25, 2018 employing establishment health unit form report, which noted that she had related that on October 24, 2018 at 1:30 p.m. in room 202 she was bitten on her right lower leg and she felt a stinging sensation. The report indicated that the wound site was visualized and treated.

Hospital notes signed by multiple physicians from October 30 to November 5, 2019, indicated that appellant reiterated the same history of a spider/insect bite to her right ankle during the previous week while at work.

The Board finds that appellant has established that she was bitten by a spider on October 24, 2018 while in the performance of duty as alleged. Appellant has provided a single account of the mechanism of injury, specifically that a spider/insect bit her right ankle, which has not been refuted by any evidence in the record.¹⁵ As noted above, a claimant's statement that an injury occurred at a given time, place, and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹⁶ Appellant has consistently related that she was bit by an insect/spider on October 24, 2018 while she was at work in room 202. The employing establishment has concurred that she was injured in the performance of duty and has agreed with her exact account of her injury. The Board therefore finds that appellant has established that the October 24, 2018 employment incident occurred in the performance of duty, as alleged.

As appellant has established that the October 24, 2018 employment incident factually occurred, the question becomes whether this incident caused a personal injury.¹⁷ The Board will therefore remand the case for consideration of the medical evidence. It is noted that appellant has established that the employment incident was a bite by a spider, which necessitates initial development of the claim consistent with OWCP procedures and Board precedent for visible bite injuries.¹⁸ Following this and 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 or condition causally related to the accepted October 24, 2018 employment incident.

CONCLUSION

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

¹⁵ See *S.W.*, Docket No. 19-0653 (issued November 21, 2019).

¹⁶ *Supra* note 13.

¹⁷ *Supra* note 14.

¹⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011); see also *M.A.*, Docket No. 13-1630 (issued June 18, 2014).

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2019 merit 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: May 29, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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