



## **FACTUAL HISTORY**

On February 18, 2019 appellant, then a 45-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a fracture at her T12 vertebra when she fell backwards walking into the building, and landing on her back while in the performance of duty. She indicated that she experienced pain in her mid-to-lower back. Appellant stopped work on the date of injury and returned to work on February 20, 2019.

In an attached statement of even date, appellant recounted that she was coming up a slight incline into the building at approximately 4:20 a.m. when she fell backwards on the incline and landed on her back. She felt immediate pain in her lower back. Appellant attempted to call one of her coworkers for assistance, but when no one came to help she turned on her side and crawled over to a wall to use to pull herself up to her feet. She indicated that she could not stand up straight without feeling a sharp pain, but eventually made it into the building and took pain medication. An hour later, appellant sought medical attention.

A February 18, 2019 visit summary from Dr. Halleh Akbarnia, Board-certified in emergency medicine, noted that appellant presented for back pain related to a fall and diagnosed a T12 compression fracture. He noted that a magnetic resonance imaging (MRI) scan of her lumbar spine and x-rays of her pelvis and lumbosacral joint were performed. Dr. Akbarnia provided treatment instructions, a prescription note and a medical note excusing appellant from work until she could be seen by neurology.

In a letter dated February 26, 2019, the employing establishment controverted appellant's claim. It explained that, upon inspection of the area where she fell, there were no body prints in the snow around the incline or her car to indicate that she had fallen or crawled to a wall to help her stand. The employing establishment attached photographs of the area around appellant's car and the incline where the alleged fall took place asserting that the images showed no body prints in the snow.

In a development letter dated March 5, 2019, OWCP advised appellant of the deficiencies of her claim and instructed her as to the factual and medical evidence necessary to establish her claim. It also noted that no firm diagnosis of a work-related condition had been provided by a physician. OWCP asked appellant to complete a questionnaire to provide further details regarding the circumstances of the claimed February 18, 2019 employment incident. It afforded her 30 days to submit the necessary evidence.

OWCP continued to receive evidence. In a February 18, 2019 medical report, Dr. Akbarnia, again noted that appellant presented with pain in her upper and lower lumbar regions after she slipped and fell outside of the building at work and hit her back. Appellant also submitted diagnostic reports of even date of an MRI scan and x-rays of her lumbar spine and pelvis from Dr. Harry Brown, a Board-certified diagnostic radiologist.

In a February 21, 2019 duty status report (Form CA-17), Dr. Jonathan Cone, Board-certified in family medicine, diagnosed a T12 fracture and noted tenderness in appellant's lower back due to a slip and fall.

Dr. Cone noted in medical reports dated February 21 and March 14, 2019 that appellant slipped on ice on a ramp on February 18, 2019 and fell backward, landing on her back. He diagnosed a stable burst fracture of the T11-12 vertebra. Dr. Cone also provided treatment instructions for appellant's injury.

In a March 11, 2019 medical report, Dr. Paul Ackerman, a Board-certified orthopedic surgeon, reported that appellant's pain in relation to her T12 compression fracture had improved approximately 50 to 60 percent. In a Form CA-17 and medical note of even date, he provided restrictions for her, instructed that she remain out of work and recommended that she perform physical therapy for four to six weeks.

In response to OWCP's questionnaire, appellant submitted a March 14, 2019 statement, in which she explained that, on the alleged date of injury, her fall actually took place on the dock, which was right at the incline. She attached photographs of the dock area and indicated that there was limited lighting during work hours. Appellant also indicated that she had no other injuries before she sustained the injury to her lower back.

In an April 2, 2019 therapy note, Dr. Ackerman provided updates from appellant's progress from her physical therapy sessions from March 13 to April 2, 2019.

By decision dated April 18, 2019, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as appellant described. It noted that she gave inconsistent statements as to where her fall occurred, which cast serious doubt on the validity of her claim. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

### **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>

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<sup>3</sup> *Supra* note 1.

<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> *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).

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.<sup>7</sup> 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.<sup>8</sup> Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>9</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 subsequent course of action.<sup>10</sup> The employee has not met his burden of proof in establishing the occurrence of an injury when there are inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>11</sup> 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.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on February 18, 2019, as alleged.

Appellant has not established the factual component of her claim as she has insufficiently explained how and where the claimed injury occurred.<sup>13</sup> In her February 18, 2019 Form CA-1, she provided that she sustained a fracture at her T12 vertebra when she was walking into work and fell backwards, landing on her back. In her narrative statement of even date, appellant indicated that she was coming up a slight incline into the building when she fell on her back and had to turn on her side and crawl over to a wall in order to pull herself up to her feet before eventually having to seek medical assistance.

In its February 26, 2019 letter of controversion, the employing establishment explained, that, upon investigation, there were no body prints in the snow around the incline or appellant's

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

<sup>8</sup> *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *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).

<sup>10</sup> *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

<sup>11</sup> *See E.C.*, Docket No. 19-0943 (issued September 23, 2019).

<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> *See E.C.*, *supra* note 11.

car to indicate that she had fallen or crawled through the snow. The employing establishment also provided photographs of the area around the incline and her car to support its assertion that appellant did not fall on her back as alleged. In response, appellant explained in her March 14, 2019 statement that her fall actually took place on a dock by the incline and provided photographs of a later date demonstrating that there was limited lighting during the time in which the injury occurred.

The Board finds that appellant's description of the incident in her Form CA-1 and February 18, 2019 statement of falling on her back while going up an incline into the building was inconsistent with the description she provided in her March 14, 2019 narrative statement that she fell at a dock by the incline. Appellant's varying descriptions of what occurred on February 18, 2019 do not establish a singular account of the mechanism of injury.<sup>14</sup> Further, the history of injury she related to her medical providers further detailed inconsistent descriptions of the mechanism of injury. Dr. Akbarnia's February 18, 2019 medical report did not provide a specific location for where the alleged injury occurred, as he only related that appellant slipped and fell outside of the building. Dr. Cone's February 21 and March 14, 2019 reports provide that she slipped on ice on a ramp and made no mention of either an incline or a dock. The medical records therefore reflect that appellant did not report a consistent history of injury to her medical providers.<sup>15</sup> Thus, the Board finds that she has not established that she sustained an injury in the performance of duty on February 18, 2019 as alleged because she did not submit sufficient evidence to establish that she actually experienced the incident at the time, place, and in the manner alleged.<sup>16</sup> Appellant did not provide a consistent description of the alleged employment incident and the mechanism by which she sustained an injury, and therefore the Board finds that she has not met her burden of proof.<sup>17</sup>

As appellant has not met her burden of proof to establish that the February 18, 2019 incident occurred in the performance of duty, as alleged, it is unnecessary to address the medical evidence of record regarding causal relationship.<sup>18</sup>

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 February 18, 2019, as alleged.

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<sup>14</sup> *Id.*

<sup>15</sup> *See F.H.*, Docket No. 19-1209 (issued November 20, 2019).

<sup>16</sup> *Supra* note 11.

<sup>17</sup> *H.D.*, Docket No. 15-1698 (issued May 4, 2016).

<sup>18</sup> *J.C.*, Docket No. 19-0542 (issued August 14, 2019); *see M.P.*, Docket No. 15-0952 (issued July 23, 2015); *Alvin V. Gadd*, 57 ECAB 172 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 18, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 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