United States Department of Labor
Employees' Compensation Appeals Board

L.B., Appellant	)	
and	)	**Docket No. 19-1799**
	)	**Issued: March 11, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Point Marion, PA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 August 27, 2019 appellant, through counsel, filed a timely appeal from a July 16, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] 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.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty on May 30, 2017, as alleged.

FACTUAL HISTORY

On June 17, 2017 appellant, then a 52-year-old postmaster, filed a traumatic injury claim (Form CA-1) alleging that on May 30, 2017 she experienced severe left knee pain and swelling when she was walking through the parking lot while in the performance of duty. She noted that she felt a "pop & scrunch & then excruciating pain." On the reverse side of the claim form, appellant's supervisor indicated that appellant had not missed work.

In a June 23, 2017 letter, appellant noted that her doctor was a Dr. Melissa Strother and the date of her appointment was June 1, 2017. She related that an x-ray examination was normal. Appellant indicated that on June 12, 2017 she underwent a magnetic resonance imaging (MRI) scan, which revealed two meniscus tears.

By letter dated June 28, 2017, K.S., an occupational health nurse administrator for the employing establishment, controverted appellant's claim on the basis of fact of injury, performance of duty, and causal relationship. She noted that appellant waited 17 days to notify her supervisor of the accident and failed to provide any medical documentation of an injury.

In an undated letter, C.W., a manager at the employing establishment, reported that appellant did not report the accident to him until two weeks after it happened even though she claimed that she went to the doctor's office on June 1, 2017 and had an MRI scan on June 12, 2017. He related that when he asked appellant if she stumbled, fell, twisted her knee, or stepped in a hole, appellant responded "No." C.W. alleged that based on the timeliness and statements, he did not believe that this injury occurred as described by appellant.

Appellant submitted a June 28, 2017 duty status report (Form CA-17) by an unknown provider with an illegible signature and an undated and unsigned authorization for examination and/or treatment (Form CA-16).

In a July 6, 2017 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 now be formally adjudicated because the employing establishment had challenged her claim. 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 appellant 30 days to submit the necessary factual and medical evidence.

On August 1, 2017 OWCP received appellant's completed development questionnaire. Appellant explained that, at the time that the injury occurred, she was walking through the employing establishment parking lot after delivering priority packages. She indicated that she felt extreme pain and was sick to her stomach. Appellant noted that she took the following day off work to elevate and ice her left knee. She reported that S.F., a mail clerk, saw her when she walked into the office. Appellant indicated that she first saw a physician on June 1, 2017. She explained

that she waited 16 days to file her claim because she thought that her knee would be okay, but after the MRI scan results she realized that it was not just a sprain.

Appellant also submitted additional medical evidence. In a June 28, 2017 report, Dr. Brenden J. Balcik, a Board-certified emergency medicine physician, related appellant's complaints of left knee pain and diagnosed left knee pain and medial meniscus tear.

On July 18, 2017 appellant began physical therapy treatment and submitted physical therapy treatment notes.

Appellant submitted an unsigned July 26, 2017 letter by an unknown provider who related that appellant twisted her knee while walking at work.

By decision dated August 9, 2017, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the May 30, 2017 employment incident occurred as alleged. It noted that she had not submitted any evidence to substantiate that she sustained an injury by walking across the parking lot. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 12, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted additional medical reports by Dr. Balcik dated August 23 and October 25, 2017. Dr. Balcik indicated that appellant's left knee pain had improved and provided examination findings. He diagnosed left knee medial meniscus tear and lower extremity edema.

A telephonic hearing was held on March 20, 2018. Appellant testified that on May 30, 2017 she was walking in the parking lot when she felt a "pop and a scrunch" and almost fell to the ground from the excruciating pain. She related that she felt like she was being coerced to say that something else happened, but she did not notice any kind of twist or stumble. Appellant also indicated that she took off work the next day on May 31, 2017 and sought medical treatment on June 1, 2017.

Following the hearing, appellant submitted a June 1, 2017 left knee x-ray examination report and a June 12, 2017 left knee MRI scan report, which showed a tear of the posterior horn of the medial meniscus and suspect tear of the lateral meniscus.

In a June 1, 2017 report, Dr. Megan Johnson, a Board-certified family physician, related that appellant presently complained of left knee joint pain with a sudden onset of one day ago. She reported that the "pain was precipitated by twisting." Dr. Johnson provided examination findings and diagnosed left knee pain.

In a February 28, 2018 letter, Dr. Balcik reported that he had evaluated appellant for a left knee injury that occurred while walking through the parking lot at work. He opined that "this mechanism (walking and then twisting the knee) is consistent with the medial meniscus tear." Dr. Balcik noted that a left knee MRI scan confirmed the medial meniscus tear.

By decision dated April 25, 2018, an OWCP hearing representative affirmed the August 9, 2017 decision.

Following the decision, OWCP received progress notes dated June 20 and October 10, 2018 by Dr. Balcik. Dr. Balcik noted left knee examination findings of mild tenderness to palpation over the anterior aspect of the knee. He diagnosed left knee pain and edema of the left lower extremity.

On April 22, 2019 appellant, through counsel, requested reconsideration.

In a March 27, 2019 letter, Dr. Balcik related that he first evaluated appellant on June 28, 2017 for a left knee injury that occurred while she was walking through the parking lot at work. He opined that this "mechanism (walking and then twisting the knee) is consistent with the medial meniscus tear that was found on the subsequent MRI scan of the left knee and is likely the cause of her symptoms." Dr. Balcik referenced his examination notes from June 28, 2017 and diagnosed left knee medial meniscus tear.

By decision dated July 16, 2019, OWCP denied modification of the April 25, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 of FECA,[4] 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.[5] 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.[6]

In order to determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.[7] There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the

[3] *Id.*

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[6] *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).

[7] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

time, place, and in the manner alleged.[8] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[9]

With respect to the first component of fact of injury, the employee has the burden of proof to establish the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.[10] 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.[11] Moreover, 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, as alleged, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[12] An 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.[13] Circumstances such 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 statement in determining whether a *prima facie* case has been established.[14]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on May 30, 2017, as alleged.

Appellant filed a traumatic injury claim alleging that she felt a "pop & scrunch & then excruciating pain" in her left knee when she was walking through the parking lot after delivering priority packages on May 30, 2017. In response to OWCP's development letter, she reiterated that she was walking through the parking lot when she felt extreme pain. Appellant did not provide any additional details regarding her left knee injury, nor did she describe the manner in which her claimed injury occurred. The Board finds that the factual evidence of record lacks the requisite

[8] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[9] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *D.B.*, 58 ECAB 464 (2007); *Robert A. Gregory*, 40 ECAB 478 (1989).

[11] *A.C.*, Docket No. 18-1567 (issued April 9, 2019); *D.B.*, 58 ECAB 529 (2007); *Gregory J. Reser*, 57 ECAB 277 (2005).

[12] *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Joseph H. Surgener*, 42 ECAB 541, 547 (1991); *Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995).

[13] *P.A.*, Docket No. 19-1036 (issued November 19, 2019); *D.B.*, 58 ECAB 464 (2007).

[14] *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *Betty J. Smith*, 54 ECAB 174 (2002).

information needed in order to determine the mechanism of how the alleged left knee injury occurred on May 30, 2017.[15]

Circumstances such as late notification of injury, lack of confirmation of injury, and continuing to work may cast sufficient doubt on an employee's statement.[16] In this case, appellant did not notify her supervisor of the alleged injury until June 15, 2017, which was 17 days after the alleged May 30, 2017 employment incident. Appellant has not submitted any witness statements confirming that the May 30, 2017 incident occurred as she described. Furthermore, her supervisor indicated on the reverse side of the Form CA-1 that she had not missed work. Although appellant asserted that she missed work on May 31, 2017, she has not submitted any factual evidence to support her allegation. Accordingly, the Board finds that the surrounding circumstances and her subsequent course of action do not establish that an employment incident occurred on May 30, 2017, as alleged.[17]

The Board therefore finds that appellant has not established that an employment incident occurred on May 30, 2017 as alleged. Consequently, it is unnecessary to address the medical evidence of record.[18]

On appeal counsel alleges that OWCP's decision was contrary to law and fact, but has not submitted any evidence to support his argument. As explained above, the Board finds that appellant has not met her burden of proof.

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 an injury in the performance of duty on May 30, 2017, as alleged.

[15] *See J.B.*, Docket No. 19-1487 (issued January 14, 2010).

[16] *Id.*

[17] *See S.F.*, Docket No. 18-0296 (issued July 26, 2018); *see also D.B.*, 58 ECAB 464 (2007).

[18] *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 July 16, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 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