

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

Z.R., Appellant

and

**U.S. POSTAL SERVICE, OAKLAND POST
OFFICE, Oakland, CA, Employer**

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**Docket No. 20-0449
Issued: September 17, 2020**

Appearances:
Appellant, pro se
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 December 24, 2019 appellant filed a timely appeal from a November 25, 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 on May 2, 2019, as alleged.

FACTUAL HISTORY

On August 10, 2019 appellant, then a 46-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 2, 2019 at 2:48 p.m., she sustained injuries to her arms, legs, and knees when she tripped on uneven pavement and fell onto the left side of her body while in

¹ 5 U.S.C. § 8101 *et seq.*

the performance of duty. On the reverse side of the claim form, the employing establishment controverted appellant's claim indicating that the notice of injury was not received until October 9, 2019, more than 30 days following the alleged injury. It also checked a box marked "No" indicating that appellant was not in the performance of duty when her injury occurred. Appellant stopped work on August 7, 2019.

In an accompanying May 3, 2019 statement, appellant asserted that she fell on May 2, 2019 while in the performance of duty. She indicated that, following the fall, she went home, took pain medication, and rested; however, the following morning she had pain in her arms, legs, and knees as a result of the fall. Appellant further noted that she did not need medical services at that time and would not be filing a claim "[a]t this time."

In a letter dated October 10, 2019, the employing establishment controverted appellant's claim for continuation of pay as she did not meet the 30-day filing requirement, noting that appellant filed her CA-1 form 160 days after the alleged incident. In a separate letter of even date, appellant's supervisor, M.K., challenged appellant's claim, asserting that appellant did not notify management of her injury until October 9, 2019. The supervisor noted that appellant had a separate work-related injury on August 7, 2019,² and had not been working since that date. M.K. further indicated that appellant had a history of falling, "industrial" accidents, and irregular attendance. The supervisor asserted that appellant did not want to deliver mail and was abusing the system.

In a development letter dated October 24, 2019, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. The questionnaire specifically inquired about her delayed notification of the alleged injury to the employing establishment. It afforded appellant 30 days to respond. No additional evidence was received.

By decision dated November 25, 2019, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the May 2, 2019 employment incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,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

² The Board notes that the record does not contain evidence related to the referenced August 7, 2019 employment incident.

³ *Supra* note 1.

⁴ *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).

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

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. 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 time, place, and in the manner alleged. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

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.⁸ The employee has not met his or her burden of proof of establishing 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.⁹

ANALYSIS

The Board finds that appellant has met her burden of proof to establish an incident in the performance of duty on May 2, 2019, as alleged.

To establish a claim for compensation in a traumatic injury claim, an employee must submit a statement that explains how the claimed injury occurred.¹⁰ Appellant has provided a detailed description on the claim form and in a narrative statement as to how the alleged May 2, 2019 incident occurred, explaining that she fell when stepping on uneven pavement while in the performance of duty as a city carrier. Her description on the claim form and in her narrative statement were consistent with the surrounding facts and circumstances. Although the employing establishment controverted the claim due to appellant's delay in filing the claim form and her

⁵ *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).

⁶ *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).

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ See *J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

⁹ See *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹⁰ *B.L.*, Docket No. 20-0394 (issued July 17, 2020); *R.B.*, Docket No. 19-1026 (issued January 14, 2020).

history of other “industrial” accidents, appellant explained that after self-medicating immediately following the claimed May 2, 2019 employment incident, she did not require medical services and noted that she would not file a claim “[a]t this time.” The employing establishment has not presented strong or persuasive evidence to refute appellant’s statements or her subsequent course of action.¹¹ Thus, the Board finds that appellant’s statements stand and establish that an employment incident occurred on May 2, 2019, as alleged.

As appellant has established that the May 2, 2019 employment incident factually occurred, the question becomes whether this incident caused an injury. The Board will, therefore, remand the case for any necessary further development, to be followed by a *de novo* decision on the issue of whether appellant has sustained medical condition causally related to the accepted May 2, 2019 employment incident.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that an injury occurred in the performance of duty on May 2, 2019, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the November 25, 2019 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: September 17, 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

¹¹ *Supra* note 9.