

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on August 30, 2019, as alleged.

FACTUAL HISTORY

On November 24, 2019 appellant, then a 63-year-old census taker, filed a traumatic injury claim (Form CA-1) alleging that on August 30, 2019 at 12:00 p.m. she sustained injuries to her right knee and left foot when she stepped into a hole and fell down as she was walking to her car while in the performance of duty. On the reverse side of the claim form an employing establishment supervisor, L.P., checked a boxed mark “No,” indicating that she was not in the performance of duty when the incident occurred, and that no injury was reported as having occurred on August 30, 2019. She further controverted the claim, noting that appellant initially reported that the incident occurred on August 28, 2019, but she did not work on that date. Appellant stopped work on September 1, 2019.

In a case summary report dated September 17, 2019, the employing establishment noted that appellant contacted its hotline and reported the she had fallen and broke her foot while out in the field conducting surveys on August 28, 2019 at 1:00 p.m. On October 29, 2019 appellant completed an Occupational Safety and Health Administration (OSHA) Injury and Illness Incident Report (OSHA Form 301), indicating that she fell down hard and broke her left foot while performing field work on August 29, 2019 at 12:00 p.m.

In a November 26, 2019 development letter, OWCP informed appellant of the deficiencies of her claim and advised her of the type of factual and medical evidence necessary to establish entitlement to FECA benefits. It provided a development questionnaire for completion to substantiate the factual basis of her claim and requested a narrative medical report from her treating physician containing a detailed description of findings and a diagnosis, explaining how her work activities caused, contributed to, or aggravated her medical conditions. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant received treatment at an emergency room on September 1, 2019. Her registration history indicates a date of injury of September 1, 2019. The triage nurse who admitted appellant noted a history of an injury to the left foot due to a fall on August 30, 2019. Appellant also treated with a physician assistant, who noted a history of her falling when her left foot went into a pothole on August 30, 2019. Thereafter, Dr. Christopher Furey, a Board-certified orthopedic surgeon, evaluated appellant and noted a history of left foot pain after stepping into a pothole earlier that day, September 1, 2019. He diagnosed a nondisplaced fracture of the proximal left fifth metatarsal and applied a splint. Appellant was instructed to follow up with Dr. Robert Joseph Wetzel, an orthopedic trauma surgeon, in one week.

Dr. Wetzel, in a December 6, 2019 report, noted that appellant related ongoing pain over the left fifth metatarsal. He reviewed updated x-rays, which reflected residual fracture line and recommended she follow up again in three months.

By decision dated January 3, 2020, OWCP denied appellant’s traumatic injury claim, finding that she had not submitted sufficient evidence to establish that the events occurred as

alleged. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

On January 15, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a September 11, 2019 report, Dr. Wetzel noted a history of left lateral foot pain after appellant had fallen 10 days prior. On examination he found pain to palpation of the lateral column of the mid and forefoot. Dr. Wetzel applied a controlled ankle motion (CAM) walker boot and instructed her to follow up in six weeks. On October 23, 2019 appellant was reevaluated and it was recommended that she continue weight bearing and to weaning from the boot as tolerated.

In an undated letter, Dr. Wetzel noted that appellant was under his care from September 11 through December 6, 2019. He opined that the injury she sustained was causally related to the fall that occurred "roughly 10 days" prior to his first evaluation.

A telephonic hearing was held on May 5, 2020. Appellant testified that she was inputting information into a laptop after leaving a home she had visited for canvassing. On the way to her car, she stepped into a hole, tripped and fell and dropped her laptop. Approximately two days later, appellant went to the emergency room. The hearing representative noted that the evidence of record reflected three dates of injury of August 28, 29, and 30, 2019 and asked her to clarify exactly when the incident occurred. Appellant indicated that she could not be exact, but that she went to the emergency room within less than one week of when she fell. She alleged that her supervisor, C.W., was in possession of records documenting that she called him to report the injury on the date it occurred. Appellant asserted that a man witnessed her fall and that she knew where he lived, but never contacted him. The hearing representative held the record open for 30 days for the submission of additional evidence.

OWCP continued to receive evidence. In a December 6, 2019 note of Dr. Dominic Haynesworth, an emergency medicine specialist, noted a history of appellant injuring her left foot, lower back, and right hip while working on August 31, 2019 and that she went to the emergency room two days later. He diagnosed sprain of lumbar ligaments and unspecified sprain of right hip.

In response to the hearing transcript, the employing establishment submitted additional factual evidence controverting appellant's claim, including a second OSHA Form 301, noting an injury on August 30, 2019 at 12:00 p.m. Time cards document that she worked on August 29, 2019 from 12:30 p.m. until 4:00 p.m., on August 30, 2019 from 12:30 p.m. until 3:15 p.m. and from 5:30 p.m. until 7:00 p.m., and on August 31, 2019 from 10:15 a.m. until 11:30 a.m.

By decision dated June 22, 2020, OWCP's hearing representative affirmed OWCP's January 3, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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

⁴ *Supra* note 1.

limitation of FECA,⁵ 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.⁶ 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.⁷

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. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁸

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁹ The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on 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 sufficient doubt on the employee's statements in determining whether a *prima facie* case has been established.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on August 30, 2019, as alleged.

Appellant has not established the factual component of her claim as she has insufficiently explained when the claimed injury occurred.¹¹ In her November 25, 2019 Form CA-1, she indicated that on August 30, 2019 at 12:00 p.m. she stepped into a hole and fell, injuring her left foot and right knee. However, in her September 17, 2019 report to the employing establishment, appellant indicated that she was injured on August 28, 2019 at 12:00 p.m. In her October 29, 2019 OSHA Form 301, she noted a date of injury of August 29, 2019 at 12:00 p.m. However, in a subsequent OSHA Form 301, appellant indicated that the alleged employment incident occurred

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *S.W.*, Docket No. 17-0261 (issued May 24, 2017).

¹⁰ *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

¹¹ *See T.S.*, Docket No. 20-0027 (issued October 6, 2020).

on August 30, 2019 at 12:00 p.m. She testified at the May 5, 2020 hearing that she could not recall the date of injury, but that it would have been within one week of September 1, 2019.

Moreover, on the reverse side of the Form CA-1 and in response to the hearing transcript, the employing establishment controverted appellant's claim. It noted the inconsistencies in the dates of injury she provided. Time cards establish that appellant did not work on August 28, 2019, which is the date she first alleged she was injured when she contacted the employing establishment on September 17, 2019. According to the time cards, appellant was also not working at 12:00 p.m. on either August 29 or 30, 2019, the dates of injury and times she listed on either OSHA Form 301.

Appellant also provided inconsistent dates of injury to her medical providers. The September 1, 2019 emergency room records reflect that, upon registration, she indicated that she was unemployed and had injured herself on September 1, 2019. Later, the triage nurse and physician assistant noted a date of injury of August 30, 2019 and thereafter, upon evaluation by Dr. Furey, appellant advised that she was injured earlier that same day. Further, Dr. Wetzel's September 11, 2019 report indicated she had fallen 10 days prior and Dr. Haynesworth's December 6, 2019 report related that the alleged injury occurred on August 31, 2019.

The Board finds that appellant has not established that she sustained an injury in the performance of duty on August 30, 2019, as alleged. Appellant provided inconsistent dates of injury throughout the evidence of record, casting serious doubt as to whether the alleged employment incident occurred at the time and place, and in the manner alleged. As such, she has not met her burden of proof.¹²

As appellant has not met her burden of proof to establish that an incident occurred in the performance of duty, as alleged, it is unnecessary to address the medical evidence of record regarding causal relationship.¹³

On appeal appellant asserts that OWCP must recognize an injury occurring "on or about" a particular date. As explained above, the evidence of record is insufficient to meet 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 a traumatic injury in the performance of duty on August 30, 2019, as alleged.

¹² *Supra* note 8.

¹³ *J.C.*, Docket No. 19-0042 (issued August 14, 2019).

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 2021
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