

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

C.M., Appellant)	
)	
and)	Docket No. 22-0456
)	Issued: August 10, 2022
DEPARTMENT OF THE INTERIOR, BUREAU)	
OF INDIAN AFFAIRS-EMERGENCY)	
FIREFIGHTERS, WEST-CENTRAL ALASKA)	
AGENCY, Anchorage, AK, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 4, 2022 appellant filed a timely appeal from a January 24, 2022 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.²

ISSUE

The issue is whether appellant has met her burden of proof to establish that a traumatic injury occurred in the performance of duty on October 15, 2021, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 24, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On December 9, 2021 appellant, then a 45-year-old archeologist, filed a traumatic injury claim (Form CA-1) alleging that on October 15, 2021 she suffered chest pain, blockage of the artery and thinning of the vein at a Best Western Hotel at 12:00 a.m. while in the performance of duty. On the reverse side of the form and e-mails dated November 2 through 13, 2021, H.Y., Supervisory Environmental Protection Specialist, indicated that appellant was on travel status associated with fire response support and that her tour of duty ended on October 14, 2021 at 10:30 p.m. She noted an ambulance was called after 12:00 a.m. on October 15, 2021 after appellant's chest pains began.

With the claim, appellant submitted an October 15, 2021 ambulance billing statement, an October 23, 2011, October 26, 2011 and a November 1, 2021 billing statements from various health care providers.

In a development letter dated December 14, 2021, 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 noted that the evidence of record indicated that appellant was on travel status when injured. OWCP asked appellant to respond to questions regarding her travel status. It afforded appellant 30 days to respond. In a letter also dated December 14, 2021, OWCP also requested additional information from the employing establishment.

In response, OWCP received a January 5, 2022 e-mail from the employing establishment, which included a copy of appellant's position description, leave analysis, travel trip information, and expenses statement. The employing establishment noted that appellant was on fire assignment at the time of the alleged injury at the KNP Fire Complex, CA. Appellant was paid for overtime and regular hours, 16 hours each day on October 14, 15, 2021 and 8 hours on October 16, 2021. The employing establishment noted that for the most part, appellant's duties were desk duties with limited field activities. At the region, appellant was a program assistant and worked with three programs assisting with administrative tasks. The employing establishment also noted that appellant had a Red Card and went out on fire assignments as a radio dispatcher.

Appellant did not respond to the development letter.

By decision dated January 24, 2022, OWCP denied appellant's traumatic injury claim, finding that the factual evidence of record was insufficient to establish that an employment incident occurred on October 15, 2021 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 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

³ *Supra* note 1.

time limitation period 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

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.⁷ 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 and place, and in the manner alleged.⁸ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁹

An employee's statement 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.¹⁰ Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. 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. 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 doubt on an employee's statement in determining whether a *prima facie* case has been established.¹¹

OWCP's procedures further provide that the protection of FECA is not limited to injuries, which occur on the industrial premises, and it contains provisions regarding the necessary information to be obtained when an employee has claimed that an injury occurred while on travel

⁴ *T.G.*, Docket No. 20-1549 (issued August 3, 2021); *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).

⁵ *T.G.*, *id.*; *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 *T.G.*, *id.*; *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).

⁷ *S.G.*, Docket No. 21-1039 (issued February 22, 2022); *T.G.*, *id.*; *T.A.*, Docket No. 20-1284 (issued January 27, 2021); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁸ *S.G.*, *id.*; *M.F.*, Docket No. 19-0578 (issued January 26, 2021); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *G.E.*, Docket No. 20-1081 (issued January 26, 2021); *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *C.R.*, Docket No. 20-1147 (issued January 5, 2021); *M.S.*, Docket No. 18-0059 (issued June 12, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹¹ *S.G.*, *supra* note 7; *K.F.*, Docket No. 18-0485 (issued February 18, 2020); *D.R.*, Docket No. 19-0072 (issued June 24, 2019).

status.¹² FECA covers an employee 24 hours a day when the employee is on travel status and engaged in activities essential or incidental to such duties.¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that a traumatic injury occurred in the performance of duty on October 15, 2021, as alleged.

On her Form CA-1 appellant indicated that on October 15, 2021 at 12:00 a.m. she developed chest pain, blockage of the artery and thinning of the vein while in the performance of duty. The employing establishment confirmed that appellant was on travel status at the time of injury. Appellant did not submit a detailed account of the alleged injury, describe any work factors or work performed, or any activity incidental to her travel status,¹⁴ which caused or aggravated her condition, or provided any additional corroborating factual evidence describing how she sustained an injury on October 15, 2021. The Board finds that appellant's limited description of the traumatic incident fails to provide sufficient detail to determine the circumstances surrounding her injury.¹⁵ The alleged mechanism of injury could not be determined as essential information was not provided.¹⁶ The Board has found that such a vague recitation of facts does not support a claimant's allegation that a specific event occurred to cause a work-related injury.¹⁷

OWCP, in its December 14, 2021 development letter, informed appellant of the type of factual and medical evidence needed to establish her traumatic injury claim. It requested that she complete an attached questionnaire and provide a detailed factual description of the alleged employment incident and her travel status. Appellant, however, did not respond to OWCP's development letter.

On appeal appellant contends that she did not receive the December 14, 2021 developmental letter. The record reflects that OWCP's letter was sent to appellant's last known

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5 (August 1992). For injuries sustained in a travel status the record must contain evidence showing when and where the employee last performed official duty, the distance between the place of injury and the place where official duty was last performed, between what points the employee was traveling when injured, the purpose of the trip, when and where the employee was next expected to perform official duty, whether at the time of the injury the employee was riding in or driving a government-owned vehicle, and whether the employee's travel expenses were reimbursable. The record must also contain evidence regarding whether the injury occurred on the direct or most usually traveled route between the place of last official duty and the place where the employee was expected to next perform official duty and, if not, the nature and extent of the deviation should be given with a full explanation of the reason for such deviation. *Id.* at Chapter 2.804.5d.

¹³ *S.T.* Docket No. 16-1710 (issued September 27, 2017); *L.A.*, Docket No. 09-2278 (issued September 27, 2010); *Ann P. Drennan*, 47 ECAB 750 (1996); *Richard Michael Landry*, 39 ECAB 232 (1987) and cases cited therein.

¹⁴ *Id.*

¹⁵ *J.B.*, Docket No. 19-1487 (issued January 14, 2020); *K.S.*, Docket No. 17-2001 (issued March 9, 2018).

¹⁶ *Id.*; see also *R.V.*, Docket No. 17-1286 (issued December 5, 2017).

¹⁷ *T.C.*, Docket No. 20-1513 (issued June 4, 2021); *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *M.B.*, Docket No. 11-1785 (issued February 15, 2012).

address of record and there is no indication that it was returned as undeliverable.¹⁸ Under the mailbox rule, a document mailed in the ordinary course of the sender's business practices to the addressee's last known address is presumed to have been received by the addressee.¹⁹

As there is no evidence of record to substantiate a traumatic injury in the performance of duty on October 15, 2021, as alleged, 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 that a traumatic injury occurred in the performance of duty on October 15, 2021, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹⁸ See *J.H.*, Docket No. 20-0785 (issued October 23, 2020); *Kenneth E. Harris*, 54 ECAB 502 (2003).

¹⁹ *Id.*