



11:04 p.m. when she fell as she walked in a bathroom, while in the performance of duty. On the reverse side of the claim form a supervisor acknowledged that appellant was injured in the performance of duty.

The employing establishment completed and signed an authorization for examination and/or treatment (Form CA-16) on December 17, 2021.

In a work status note dated December 22, 2021, Dr. Gregory S. Sextro, a Board-certified orthopedic surgeon, advised that appellant could return to work performing sedentary work activities on December 27, 2021 with a follow up on January 12, 2022.

In a development letter dated December 29, 2021, OWCP advised appellant that additional factual and medical evidence was necessary to establish her claim. It requested that she complete an attached questionnaire and afforded her 30 days to submit the necessary evidence.

In a medical report dated December 22, 2021, Dr. Sextro noted that appellant had a slip and fall at work on December 17, 2021. On physical examination, Dr. Sextro noted that appellant's x-rays of the right thumb showed advanced 1<sup>st</sup> joint carpal metacarpal (CMC) arthritis, x-rays of appellant's right knee showed advanced right knee arthritis, and x-rays of her right shoulder showed moderate glenohumeral joint arthritis. He related that he had injected appellant's right knee to get her back to baseline status.

In a report dated January 12, 2022, Dr. Sextro related that appellant returned for a follow up of her right knee and right shoulder following a slip and fall at work. He noted that appellant had received a knee injection. Dr. Sextro noted appellant's diagnoses of work aggravated right knee degenerative joint disease, work aggravated right shoulder joint disease with rotator cuff tendinitis, and work aggravated 1<sup>st</sup> CMC arthritis. He concluded that appellant was pretty much back to baseline and could return to full-duty work on January 17, 2022.

By decision dated February 10, 2022, OWCP denied appellant's claim, finding that the factual evidence of record was insufficient to establish that the employment incident occurred as alleged.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</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>3</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

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</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).

to the employment injury.<sup>4</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>5</sup>

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>6</sup> 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.<sup>7</sup> Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>8</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 or her subsequent course of action.<sup>9</sup> The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence that 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 *prima facie* case has been established.<sup>10</sup> 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>11</sup>

### ANALYSIS

The Board finds that appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on December 17, 2021, as alleged.

The record establishes that on December 17, 2021 appellant was in the performance of duties of her federal employment when she slipped and fell while walking in a bathroom.

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<sup>4</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>5</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).

<sup>6</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

<sup>7</sup> *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

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

<sup>10</sup> *Betty J. Smith*, 54 ECAB 174 (2002); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

<sup>11</sup> *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

The injuries appellant claimed are consistent with the facts and circumstances she set forth. As noted above, the 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.<sup>12</sup> 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>13</sup> The Board, thus, finds that appellant has met her burden of proof to establish that the December 17, 2021 employment incident occurred in the performance of duty, as alleged.

As appellant has established that the December 17, 2021 employment incident occurred as alleged, the question becomes whether the incident caused an injury.<sup>14</sup> As OWCP found that she had not established fact of injury, it did not evaluate the medical evidence. The case must, therefore, be remanded for consideration of the medical evidence of record.<sup>15</sup> After such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish an injury causally related to the accepted December 17, 2021 employment incident.<sup>16</sup>

### CONCLUSION

The Board finds that appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on December 17, 2021, as alleged.

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<sup>12</sup> *L.Y.*, Docket No. 21-0221 (issued June 30, 2021); *M.W.*, Docket No. 20-1489 (issued March 29, 2021); *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

<sup>13</sup> *See M.C.*, *supra* note 11; *D.B.*, 58 ECAB 464, 466-67 (2007).

<sup>14</sup> *See M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

<sup>15</sup> *C.B.*, Docket No. 21-0554 (issued June 21, 2022); *S.M.*, Docket No. 16-0875 (issued December 12, 2017).

<sup>16</sup> The Board notes that the employing establishment issued a Form CA-16, dated December 17, 2021. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 10, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 29, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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