

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

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<b>T.F., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 23-0077</b>
	)	<b>Issued: April 13, 2023</b>
<b>U.S. POSTAL SERVICE, PORT CHARLOTTE</b>	)	
<b>ANNEX POST OFFICE, Port Charlotte, FL,</b>	)	
<b>Employer</b>	)	
_____	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 21, 2022 appellant, through counsel, filed a timely appeal from an October 6, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

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

## ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on December 20, 2019 as alleged.

## FACTUAL HISTORY

On December 30, 2019 appellant, then a 30-year-old rural carrier, filed a traumatic injury claim (Form CA-1), alleging that on December 20, 2019 she sprained her left hip/buttocks when she missed the bottom step of the stairs while in the performance of duty. On the reverse side of the claim form an employing establishment supervisor acknowledged that she was in the performance of duty when injured, but contended that her knowledge of the facts about the injury did not comport with the statements of appellant and/or witnesses. Appellant did not stop work.

In support of her claim, appellant submitted a December 30, 2019 computerized tomography (CT) scan of the lower extremities which demonstrated a normal left hip without acute fracture or acute dislocation.

In a December 30, 2019 provider report, Dr. Tucker Greene, a Board-certified emergency physician, diagnosed a strain of the left hip and noted that appellant presented for persistent left hip and groin pain after a fall 10 days prior when she missed a step and slipped at work, impacting her left leg and jamming her left hip. Appellant also reported that, since that date, she experienced pain in her left hip and groin that progressively worsened, particularly when ambulating or bearing weight. Dr. Greene noted that she had a history of osteoarthritis, avascular necrosis in her right hip, and had suffered a fracture of the right hip earlier in the year which required surgery.

In a December 30, 2019 work excuse note, Lee Moretti, a physician assistant, related that appellant could return to work the following day with no restrictions.

In a January 2, 2020 note, Dr. John Braut, a Board-certified orthopedic surgeon, related that appellant presented with a left leg and hip injury that she sustained when descending stairs and missing the last step. He assessed left hip pain and recommended limited weight bearing, heat, and ice.

A January 3, 2020 visit note and discharge summary from Dr. Robert Brandon, a family and emergency physician, noted that appellant was admitted for complaint of hip injury/pain arising from a December 20, 2019 employment accident and discharged to her home the same day. In a narrative report of even date, Dr. Brandon diagnosed a strain of the muscle, fascia and tendon of the left hip and noted that she related that she walked three to four miles per day and injured her hip during a December 20, 2019 work accident, after which she continued to experience intense pain. In a work excuse note of even date, he held appellant off work until cleared by an orthopedic specialist and provided work restrictions of standing no longer than 60 minutes at a time.

In a January 7, 2020 challenge letter, the employing establishment asserted that appellant did not identify any employment factors that caused the injury; that the injury was idiopathic and unrelated to workplace factors or environmental conditions; and that she had not established fact of injury, causal relationship, or performance of duty.

A January 9, 2020 magnetic resonance imaging (MRI) scan report of appellant's pelvis revealed a nondisplaced subchondral fracture involving the superior left femoral head with extensive bone marrow edema throughout the head and neck, small left hip effusion with reactive deep soft tissue edema, mild-to-moderate left hip osteoarthritis, mild osteoarthritis of the sacroiliac joints, and central disc protrusions of the lower lumbar spine with annular tearing.

In a January 16, 2020 visit note, Dr. Braut noted that appellant reported left hip pain after missing a step and jarring her hip at work. He diagnosed an unspecified fracture of the head of the left femur.

In a January 29, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, appellant submitted a December 30, 2019 discharge summary from an unidentified healthcare provider. In a note of even date, Dr. Greene provided a diagnosis of left hip strain and indicated that appellant reported that on December 20, 2019 she missed a step at work and impacted the concrete with her foot, causing pain that grew increasingly worse.

In January 24, 2020 encounter notes, Dr. Bryan Hanypsiak, Board-certified in orthopedic and sports medicine surgery., related that appellant reported left hip pain which began on December 20, 2019 when she fell walking down a flight of stairs. He performed a physical examination, diagnosed left hip joint pain and a closed hip fracture, and obtained her consent for immediate surgery.

In a February 11, 2020 attending physician's report (Form CA-20), Dr. Hanypsiak diagnosed a closed hip fracture from a December 20, 2019 injury and noted that he treated appellant by performing a left hip open reduction internal fixation (ORIF). In a duty status report (Form CA-17) of even date, he diagnosed a closed hip fracture from a December 20, 2019 injury and held her off work.

A February 17, 2020 MRI scan report of appellant's left knee noted an impression of status post ORIF procedure for fracture of the left femur, marrow edema within the distal left femur, a metallic artifact secondary to orthopedic hardware, moderate knee joint effusion, and peripheral tear posterior horn medial meniscus.

By decision dated March 3, 2020, OWCP denied appellant's traumatic injury claim, finding that she had not submitted sufficient evidence to establish that the events or incident occurred as alleged. It noted that she had not responded to its developmental questionnaire. Consequently, OWCP found that appellant had not met the requirements to establish an injury as defined by FECA.

OWCP continued to receive evidence, including a January 3, 2020 order summary and note from Dr. Brandon relating that appellant injured her hip during a December 20, 2019 work accident and diagnosing a strain of the muscle, fascia, and tendon of the left hip. In discharge instructions of even date, an unidentified healthcare provider noted a diagnosis of strain of muscle, fascia, and tendon of the left hip.

In a January 24, 2020 final report, Dr. Tabitha Williams, a Board-certified emergency physician, performed a physical examination for surgical clearance. An operative report dated January 24, 2020 from Dr. Hanypsiak, described the left hip ORIF with intramedullary device procedure that he performed on appellant. Appellant also submitted a January 24, 2020 anesthesia record, preadmission assessment, and checklist from unidentified healthcare providers.

Physical therapy notes dated February 18 through March 25, 2020, from Gabrielle Charles and Heather Parton, physical therapists, related that appellant performed therapeutic exercise.

In February 21, 2020 encounter notes, Dr. Hanypsiak related that appellant fractured her left hip after falling while walking down a flight of stairs. He diagnosed pain of the left hip joint, a closed hip fracture, left knee pain, an insufficiency fracture, an acute medial meniscal tear, and avascular necrosis of bone.

On February 12, 2021 appellant, through counsel, requested reconsideration of the March 3, 2020 decision and submitted additional evidence.

In an undated letter, Dr. Hanypsiak noted that he treated appellant for a December 20, 2019 work injury which resulted in a nondisplaced fracture of her hip. He related that he performed a surgical procedure to stabilize the fracture and indicated that her injuries as described match perfectly with her physical examination and imaging studies. Dr. Hanypsiak asserted that appellant's injuries were directly and causally related to her December 20, 2019 fall, which occurred while she at work.

By decision dated October 6, 2022, OWCP denied modification of the March 3, 2020 decision, finding that appellant had not submitted sufficient evidence to establish that the incident occurred as alleged. It again noted that she had not responded to its developmental questionnaire.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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,<sup>4</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 to the employment injury.<sup>5</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>6</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> *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).

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. The first component is that 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.<sup>7</sup>

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. 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.<sup>8</sup> 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.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic incident in the performance of duty on December 20, 2019 as alleged.

Appellant has not provided sufficient detail to establish that a traumatic injury occurred in the performance of duty, as alleged.<sup>10</sup> On her Form CA-1 she asserted only that she sprained her left hip/buttocks when she missed a bottom step while in the performance of duty. The Board has found that such a vague recitation of facts does not support a claimant's burden to establish an injury in the performance of duty, as alleged.<sup>11</sup>

OWCP, in its January 29, 2020 development letter, informed appellant of the type of factual and medical evidence needed to establish her claim and provided her with a factual questionnaire for her completion. However, appellant has not responded to the questionnaire, nor has she not provided factual evidence to otherwise substantiate that an employment incident occurred in the performance of duty on December 20, 2019 as alleged. Thus, the Board finds that she has not met her burden of proof.

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<sup>7</sup> *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).

<sup>8</sup> *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

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

<sup>10</sup> *See J.W.*, Docket No. 19-0335 (issued July 2, 2019).

<sup>11</sup> *T.C.*, Docket No. 20-1513 (issued June 3, 2021); *M.C.*, *supra* note 9; Docket No. 18-1278 (issued March 7, 2019); *M.B.*, Docket No. 11-1785 (issued February 15, 2012).

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 December 20, 2019 as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 6, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 13, 2023  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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