United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
and	)	**Docket No. 23-0365**
	)	**Issued: October 18, 2023**
U.S. POSTAL SERVICE, MARTINSBURG POST OFFICE, Martinsburg, WV, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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
JANICE B. ASKIN, Judge

JURISDICTION

On January 17, 2023 appellant, through counsel, filed a timely appeal from a December 15, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] 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.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the December 15, 2022 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on February 9, 2022, as alleged.

FACTUAL HISTORY

On February 15, 2022 appellant, then a 45-year-old postmaster, filed a traumatic injury claim (Form CA-1) alleging that on February 9, 2022 her knee gave out when walking to her car, causing her to fall to the ground while in the performance of duty. She explained that when she got up, she fell again. Appellant stopped work on February 10, 2022. She notified the employing establishment about her injury on February 15, 2022. On the reverse side of the claim form, Postmaster L.B., appellant's supervisor, reported being on leave at the time of the injury and appellant informed the on-call postmaster she heard a pop in her knee on February 9, 2022, when she was walking to her car. However, appellant told another postmaster that she hurt her knee while talking care of her mother at home. The employing establishment controverted the claim due to conflicting statements surrounding the February 9, 2022 employment incident.

In an undated statement, Postmaster S.P. stated that on February 10, 2022 he spoke with appellant on the telephone about coverage for her office because she had injured her knee early that morning while attempting to catch her mother who was falling. On February 12, 2022 appellant called him indicating that she needed to file an accident report because her injury was from repetitive use.

In a February 16, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a letter dated February 18, 2022, the employing establishment challenged the claim asserting that appellant submitted conflicting statements regarding the employment incident. It reported that she provided two different accounts to postmaster S.P., informing him on February 9, 2022 that she injured her knee early that morning when catching her mother from falling and also informing him on February 12, 2022 that she needed to file an accident report because her injury was from repetitive use.

In a progress note dated February 23, 2022, Dr. Daniel Warner, a Board-certified orthopedic surgeon, related that on February 9, 2022 appellant was walking to her car when her right knee suddenly buckled causing her to fall to the ground. He diagnosed acute pain of right knee, complete tear of anterior cruciate ligament (ACL) of right knee, grade 1 injury of medial collateral ligament (MCL) of right knee, closed fracture of upper end of right fibula with tibia, and effusion of right knee.

In a February 25, 2022 statement, appellant described the circumstances surrounding her injury. She reported that she worked by herself bending, twisting, and throwing packages on February 9, 2022, causing her right knee to give out later that day. Appellant reported that for the past two years she had been working alone picking up packages weighing up to 70 pounds, which had overworked her knees, causing the right knee to eventually give out on February 9, 2022.

In an undated letter received by OWCP on April 1, 2022, L.B. reported that appellant had changed her story several times regarding the traumatic injury and disputed the claim. She noted that on February 9, 2022 appellant informed postmaster S.P. that she had injured her knee while taking care of her mother earlier that day. However, on February 12, 2022 appellant notified a different postmaster that she sustained a work-related injury on February 9, 2022 when her knee gave out while walking in the parking lot.

By decision dated April 1, 2022, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the February 9, 2022 employment incident occurred as alleged. It found that she had provided differing descriptions of how the injury occurred and failed to establish that the injury occurred in the manner alleged. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 12, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In an April 11, 2022 medical report, Dr. Warner reported first evaluating appellant on February 11, 2022 for a work-related injury that occurred on February 9, 2022 when appellant was walking and fell at work. He further noted that her mechanism of injury was consistent with an ACL injury as she had no preexisting knee pain or instability before the injury on February 9, 2022. Dr. Warner opined that the February 9, 2022 injury most likely caused appellant's ACL, meniscus, and low-grade MCL conditions.

A hearing was held on August 10, 2022. Appellant testified that on the morning of February 9, 2022 she was sorting mail and heard a pop in her right knee while throwing packages. She continued working because there was no one available to help her. At the end of her workday, appellant was walking to her car in the post office parking lot when her right knee gave out, causing her to fall on her left back. She reported driving home but noted that her knee continued to give out, rendering her unable to walk without crutches. Appellant stated that she had been working by herself from November 2021 until February 9, 2022. She noted that she was not taking care of her mother on February 10, 2022 because she could not even walk without crutches. Appellant stated that her normal duties included three hours of clerical work a day, 15 hours a week, sorting letters and flats, and various postmaster duties. When she worked alone, she had to throw packages, sort mail, work the window, and get mail ready for the truck to take the outgoing mail which involved lifting, bending, stooping, kneeling, and twisting.

Following the hearing, L.B. submitted an undated narrative statement, which was received by OWCP on August 31, 2022. She asserted that appellant left a voicemail message for her at 9:48 p.m. on February 9, 2022 and made no mention of any accident, and further informed postmaster, S.P. that she would be using leave on February 10, 2022 to take care of her mother. L.B. argued that appellant would not have been able to care for her mother if she had sustained a left knee injury the previous day. With her statement, she included voicemail transcripts of the February 9 and 12, 2022 messages.

By decision dated September 28, 2022, OWCP's hearing representative affirmed the April 1, 2022 decision. The hearing representative found that appellant failed to provide a

consistent history of injury and the evidence of record cast serious doubt on the validity of her claim.

On December 13, 2022 appellant, through counsel, requested reconsideration.

In a November 10, 2022 report, Dr. Warner noted that appellant had an instability episode earlier in the day on February 9, 2022, where she "had her foot planted and had a twist[,] felt a pop in the knee and some swelling." He explained that this instability episode did not cause her to fall and she continued to work for the entirety of the day despite her discomfort from the trauma. As she was leaving work, appellant experienced a second instability episode, which caused her to fall. Dr. Warner reported that ACL injuries usually were contact related or not caused by a fall. Instability episodes mostly involved planting of the foot and rotation of the leg, which in tum resulted in a fall, either coming down from a jump position or in valgus thrust. Dr. Warner explained that appellant described a similar situation where she had her foot planted and twisted and had a valgus moment where she felt her knee go out of place and then inward. Appellant further reported that she did not fall during this episode and was able to continue to work despite her injury. He opined that she sustained an ACL injury via a partial or complete tear at work on the morning of February 9, 2022, which subsequently caused her to fall due to an instability episode later that day in the parking lot.

By decision dated December 15, 2022, OWCP denied modification of the September 28, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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,[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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the

[4] *Id*.

[5] *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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] *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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] *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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).

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

To establish that, an injury occurred as alleged, the injury does not have to 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 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.[10] 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.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on February 9, 2022, as alleged.

In her February 15, 2022 Form CA-1, appellant indicated that on February 9, 2022 she sustained a right knee injury when she was leaving work and walking to her car when her right knee gave out without warning, causing her to fall. When she tried to get up her knee gave out fell again. In her February 25, 2022 statement, appellant reported that on February 9, 2022 she worked by herself bending, twisting, and throwing packages, causing her right knee to give out later that day. She reported that for the past two years she had been working alone picking up packages weighing up to 70 pounds, which had overworked her knees, causing the right knee to eventually give out on February 9, 2022. At the August 10, 2022 hearing, appellant testified that on the morning of February 9, 2022 she was sorting mail and heard a pop in her right knee while throwing packages. She continued working because there was no one available to help her. At the end of her workday, appellant was walking to her car in the post office parking lot when her right knee gave out, causing her to fall on her left back. While appellant's varying statements are not wholly contradictory, they fail to provide a consistent description of the alleged employment incident she attributes to her injury.[12]

[8] *H.M.*, Docket No.22-0343 (issued June 28, 2022); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

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

[10] *K.H.*, Docket No. 22-0370 (issued July 21, 2022); *Betty J. Smith*, 54 ECAB 174 (2002); *see also L.D.*, Docket No. 16-0199 (issued March 8, 2016).

[11] *See K.H., id.*; *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

[12] *B.F.*, Docket No. 22-1106 (issued December 13, 2022).

The record also contains statements submitted by employing establishment supervisors, which provide conflicting accounts as to how the injury occurred.[13] A statement from postmaster, S.P. indicated that on February 10, 2022 appellant informed him that she injured her knee that morning when she was taking care of her mother while on February 12, 2022, she informed him her injury was due to her repetitive work duties. Given these conflicting accounts regarding appellant's right knee injury, the evidence of record fails to establish that the employment incident occurred in the manner alleged.[14]

Appellant has failed to present a clear factual statement in the record describing the specific alleged employment-related incident alleged to have caused or contributed to her claimed medical condition.[15] Her differing descriptions of what occurred and how do not establish a singular account of injury.[16]

As the evidence of record is insufficient to establish a traumatic injury in the performance of duty on February 9, 2022, as alleged, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument, together 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 incident in the performance of duty on February 9, 2022, as alleged.

[13] *S.H.*, Docket No. 22-1090 (issued January 19, 2023).

[14] *See B.S.*, Docket No. 21-1414 (issued November 23, 2022).

[15] *See B.M.*, Docket No. 21-1185 (issued March 4, 2022); *D.C.*, Docket No. 18-0082 (issued July 12, 2018).

[16] *L.T.*, Docket No. 20-0345 (issued June 21, 2022); *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).

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 18, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board