

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

PEGGY A. BLEDSOE, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Dyersburg, TN, Employer**

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**Docket No. 05-292
Issued: April 6, 2005**

Appearances:
Peggy A. Bledsoe, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On November 15, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' October 19, 2004 merit decision denying that she sustained an injury in the performance of duty on June 26, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof that she sustained an injury in the performance of duty on June 26, 2004.

FACTUAL HISTORY

On August 6, 2004 appellant, then a 55-year-old modified clerk, filed a traumatic injury claim alleging that she sustained injury when she fell on her hands and knees at the back dock of the employing establishment on June 26, 2004.¹ Appellant did not stop work.

¹ Appellant indicated that her right foot had been hurting and that her "right heel bone broke and gave away."

In a statement dated August 16, 2004, Sandy Jones, a supervisor, stated that appellant advised her a few days after June 26, 2004 that she had fallen in the parking lot at work on that date, not in the back dock area as indicated in her traumatic injury claim. In another statement dated August 16, 2004, Moiya Clark, the postmaster at the Dyersburg Post Office, stated that appellant reported to him that she fell in the parking lot, not in the back dock. He further noted, "She stated this to me at least a week after she said that she fell. [Appellant] stated to me that she tripped over something on the way to the parking lot and fell to the ground."

Appellant submitted a report dated June 28, 2004 in which Dr. Rodney J. Staton, an attending podiatrist, indicated that she reported falling to the ground after her right heel gave out while walking across the parking lot at work. Dr. Staton indicated that he needed to rule out a stress fracture. In a report dated July 2, 2004, Dr. Staton indicated that appellant had a fracture of the right heel.² In reports dated July 13 and August 16, 2004, Dr. Staton indicated that she had a right calcaneal fracture.³

Appellant also submitted various treatment notes from prior to June 26, 2004, which indicated that she had plantar fasciitis of the right foot.

In a letter dated September 1, 2004, the Office requested that appellant submit additional factual and medical evidence in support of her claim.

In an undated statement received by the Office on September 28, 2004, appellant stated that on June 26, 2004 she clocked out and walked out to the back dock and "my foot just gave away and I fell on my hands and knees." She indicated that she then got up and walked across the parking lot and drove home. Appellant stated that her foot became progressively more painful and that on June 28, 2004 she reported the injury to the employing establishment through a telephone call and sought medical treatment.

In a form report dated September 16, 2004, Dr. Staton indicated that appellant reported falling to the ground after her right heel gave out while walking across the parking lot at work on June 26, 2004. Dr. Staton diagnosed calcaneal fracture of the right foot and stated "unknown" in response to a question regarding whether appellant's condition was caused or aggravated by an employment activity.

By decision dated October 19, 2004, the Office denied appellant's claim that she sustained an injury in the performance of duty on June 26, 2004. The Office found that appellant did not establish the occurrence of the June 26, 2004 employment incident as alleged because there were such inconsistencies in the evidence as to cast doubt on her claim. The Office stated:

"The fact that the injury was not reported on same day as alleged (June 26, 2004) to your supervisor and the fact that you claimed that the injury occurred on the

² In a June 28, 2004 report, Dr. Staton indicated that appellant had a possible right foot fracture.

³ The record contains the findings of a June 30, 2004 bone scan, which contains results consistent with a right calcaneal fracture.

back dock of main office and then again you stated that you fell in the parking lot. Such inconsistencies cast serious doubt on the validity of your claim.”

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act⁴ has the burden of establishing the essential elements of her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and specific condition for which compensation is claimed is causally related to the employment injury.⁵ To determine whether a federal employee has sustained a traumatic injury in the performance of duty the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged⁶ and must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷ The term injury as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.⁸

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 her subsequent course of action.⁹ An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹⁰ 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 an employee’s statements in determining whether a *prima facie* case has been established.¹¹ However, 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.¹²

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁷ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁸ *Elaine Pendleton*, *supra* note 5; 20 C.F.R. § 10.5(a)(14).

⁹ *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

¹⁰ *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹¹ *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

¹² *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

ANALYSIS

Appellant filed a traumatic injury claim alleging that she sustained injury when she fell on her hands and knees at the back dock of the employing establishment on June 26, 2004. By decision dated October 19, 2004, the Office denied appellant's claim finding that appellant did not establish the occurrence of the June 26, 2004 employment incident as alleged because there were such inconsistencies in the evidence as to cast doubt on her claim.

The Board finds that appellant has established the occurrence of an employment incident on June 26, 2004. Appellant consistently reported in the factual statements submitted in connection with her claim and the injury history portions of the medical reports of record that she fell on her hands and knees at work on June 26, 2004. Both Sandy Jones, a supervisor and Moiya Clark, the postmaster at the Dyersburg Post Office, indicated that appellant reported falling at work on June 26, 2004. The Board notes that the precise location where appellant fell on June 26, 2004 is not entirely clear from the record, but that this circumstance would not create an inconsistency so great as to cast doubt on the validity on appellant's claim.¹³ As noted above, 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.¹⁴

In its October 19, 2004 decision, the Office noted that appellant did not report her June 26, 2004 fall on that date. However, the record reveals that appellant sought treatment for a foot injury on June 28, 2004 with Dr. Staton. Appellant indicated that she reported the injury to the employing establishment on June 28, 2004 through a telephone call and Ms. Jones stated that she reported the injury a few days after June 26, 2004.¹⁵ Giving these circumstances, there is no strong or persuasive evidence to refute appellant's account of the events of June 26, 2004 and there are no such inconsistencies to cast doubt on the validity of her claim.

The Board further finds that although appellant has established the occurrence of the June 26, 2004 employment incident, she has not submitted sufficient medical evidence to establish that she sustained an injury due to this incident. Appellant submitted a July 2, 2004 report in which Dr. Staton indicated that she had a fracture of the right heel and July 13 and August 16, 2004 reports in which Dr. Staton indicated that she had a right calcaneal fracture. These reports, however, are of limited probative value on the relevant issue of the present case in

¹³ Ms. Jones and Ms. Clark noted that appellant reported falling in the parking lot or going to the parking lot of the employing establishment and, in two medical reports, the injury history portion indicated that appellant reported falling in the parking lot. It should be noted that the employing establishment has not denied that appellant's alleged fall would have occurred on its premises. See *Dollie J. Braxton*, 37 ECAB 186, 188-89 (1985) for a discussion of the premises doctrine and its effect on the determination of whether a claimed injury has occurred in the performance of duty.

¹⁴ In her September 2004 statement, appellant suggested that the back dock was located near the parking lot and drove home. It should be noted that when the Office requested more factual and medical evidence from appellant on September 1, 2004 it did not request that she clarify the precise location of the fall.

¹⁵ Appellant indicated that her foot became progressively more painful after June 26, 2004 and suggested that this circumstance explained why she briefly delayed in reporting the injury and seeking medical care.

that they do not contain an opinion on causal relationship.¹⁶ In a form report dated September 16, 2004, Dr. Staton indicated that appellant reported falling to the ground after her right heel gave out at work on June 26, 2004 and diagnosed calcaneal fracture of the right foot. However, Dr. Staton stated “unknown” in response to a question regarding whether appellant’s condition was caused or aggravated by an employment activity.

CONCLUSION

The Board finds that appellant did not meet her burden of proof that she sustained an injury in the performance of duty on June 26, 2004. Although appellant has established the occurrence of the June 26, 2004 employment incident, she has not submitted sufficient medical evidence to establish that she sustained an injury due to this incident.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers’ Compensation Programs’ October 19, 2004 decision is affirmed as modified to reflect that appellant establish that although appellant has established the occurrence of the June 26, 2004 employment incident, she has not submitted sufficient medical evidence to establish that she sustained an injury due to this incident.

Issued: April 6, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁶ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).