United States Department of Labor
Employees' Compensation Appeals Board

M.O., Appellant	)	
and	)	**Docket No. 15-1423**
	)	**Issued: April 12, 2016**
DEPARTMENT OF HOMELAND SECURITY, AIRPORT TERMINAL, Humacao, PR, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 17, 2015 appellant filed a timely appeal of an April 1, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on January 3, 2015.

[1] 5 U.S.C. § 8101 *et seq.*

[2] On appeal to the Board appellant submitted new evidence. As OWCP did not consider this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On January 7, 2015 appellant, then a 44-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on January 3, 2015 at 9:00 p.m. she slipped in the break room of the employing establishment injuring her knee, back, and hip. On the reverse of the form, appellant's tour of duty is listed as from 9:00 p.m. to 5:30 a.m.

In support of her claim, appellant submitted a magnetic resonance imaging (MRI) scan of her left knee dated January 9, 2015 which demonstrated medial collateral ligament sprain. On February 4, 2015 Dr. Leonardo Pirillo, a physiatrist, examined appellant due to knee pain and reviewed her MRI scan. The remainder of this note is illegible.

Dr. Manuel Soto Ruiz, an orthopedic surgeon, completed a note on February 18, 2015 and determined that appellant could not work. He also completed a note in Spanish on the same date.

OWCP requested additional factual and medical information from appellant in support of her claim on February 27, 2015. It provided appellant with a questionnaire and requested that she sign, date, and return the completed document to OWCP. OWCP allowed 30 days for a response. Appellant submitted a narrative statement in Spanish, which she had previously provided to the employing establishment. She also submitted medical documentation written in Spanish and a letter from counsel dated February 17, 2015 also in Spanish.

Dr. Arnaldo Reyes, a family practitioner, examined appellant on January 15 and 28, 2015, finding that she was totally disabled through February 19, 2015. He diagnosed tear of the lateral cartilage or meniscus of the knee and sprain of the medial collateral ligament of the knee.

In a note dated March 4, 2015, Dr. Ruiz provided work restrictions of no lifting over 30 pounds, no bending, and standing up to 30 minutes at a time. Appellant accepted a limited-duty assignment on March 17, 2015.

By decision dated April 1, 2015, OWCP denied appellant's claim for a traumatic injury, finding that she had failed to submit the necessary evidence to establish her claim. It stated that appellant had failed to provide the factual evidence requested in the February 27, 2015 letter and to provide medical evidence establishing a causal relationship between her diagnosed conditions and her January 3, 2015 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment

[3] 5 U.S.C. §§ 8101-1893.

injury.[4] 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.[5]

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."[6] To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First the employee must submit sufficient evidence to establish that he and she actually experienced the employment incident at the time, place and in the manner alleged.[7] Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.[8]

ANALYSIS

The Board finds that the case is not in posture for a decision.

OWCP denied appellant's claim because she had failed to submit sufficient factual evidence to establish that the events occurred as she alleged. It stated that appellant failed to provide factual evidence requested in the February 27, 2015 letter. OWCP further noted that appellant had failed to provide medical evidence establishing a causal relationship between a diagnosed condition and her employment. The case record, however, does not contain a translation of the Spanish portions of appellant's medical records.

OWCP denied appellant's claim as she had failed to submit sufficient factual and medical evidence to establish that the events occurred as she alleged or that there was causal relationship between the diagnosed condition and her employment. The Board has held that it is unreasonable for OWCP to deny a claim before it attempts to secure an accurate translation of relevant medical evidence.[9] It is well established that proceedings under FECA are not adversarial in nature and that, while the claimant has the burden to establish entitlement to

[4] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] 20 C.F.R. § 10.5(ee).

[7] *John J. Carlone*, 41 ECAB 354 (1989).

[8] *J.Z.*, 58 ECAB 529 (2007).

[9] *Ana D. Pizarro*, 54 ECAB 430 (2003) (finding that appellant had submitted medical evidence in Spanish, but that OWCP had not analyzed or sought a translation of this medical evidence, and remanding the case for this purpose); *Armando Colon*, 41 ECAB 563 (1990) (OWCP abused its discretion in denying an employee's request for reconsideration because the medical evidence submitted lacked probative value because it was in a foreign language); *H.S.*, Docket No. 11-1170 (issued December 14, 2011); *M.T.*, Docket No. 09-208 (issued November 9, 2009); *A.G.*, Docket No. 08-206 (issued May 12, 2008); *R.R.*, Docket No. 13-1405 (issued October 21, 2013).

compensation, OWCP shares responsibility in the development of the evidence. OWCP has an obligation to see that justice is done.[10]

For OWCP and the Board to properly consider all medical evidence of record, an accurate translation of the medical report in Spanish is needed. The Board clarifies, however, that OWCP is under no obligation to translate appellant's or her attorney's own statements. It must, however, provide appellant an opportunity to provide these documents in English before it finds these documents of no probative value. Therefore, the case will be remanded for action consistent with this decision and, after conducting such further development as it may find necessary, OWCP shall issue an appropriate merit decision.

CONCLUSION

The Board finds that the case is not in posture for a decision and must be remanded for further development of the record.

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2015 decision of the Office of Workers' Compensation Programs is remanded for further action consistent with this decision of the Board.

Issued: April 12, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[10] *John J. Carlone, supra* note 7.