United States Department of Labor
Employees' Compensation Appeals Board

A.H., Appellant	)	
and	)	**Docket No. 16-0888**
	)	**Issued: August 4, 2016**
DEPARTMENT OF THE ARMY, MEDICAL COMMAND CPAC, Fort Carson, CO, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 29, 2016 appellant filed a timely appeal from a March 21, 2016 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish an injury in the performance of duty on February 3, 2016.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its March 21, 2016 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

FACTUAL HISTORY

On February 3, 2016 appellant, then a 36-year-old sterile processing technician, filed a traumatic injury claim (Form CA-1) alleging that on that day she slipped on a patch of ice on a sidewalk outside of the employing establishment resulting in a broken ankle. The injury occurred at approximately 6:30 a.m. On the reverse side of the form, appellant's regular work hours were recorded as Monday through Friday, 7:00 a.m. to 3:00 p.m. She notified her supervisor, first received medical care, and stopped work on the date of injury. Appellant's supervisor checked the box marked "yes" when asked if his knowledge of the facts about the injury agreed with statements of the employee and/or witness.

By letter dated February 18, 2016, OWCP notified appellant that her claim was initially administratively handled to allow medical payments, as her claim appeared to involve a minor injury resulting in minimal or no lost time from work. However, the merits of her claim had not been formally considered and her claim had been reopened because she had not returned to work in a full-time capacity and a nurse had been assigned to her case. Appellant was advised that the evidence of record was insufficient to establish her traumatic injury claim.

OWCP requested that appellant submit a response to a form questionnaire in order to substantiate the factual basis of her claim and a medical report from her attending physician including a diagnosis, history of the injury, and a physician's opinion on causal relationship supported by medical rationale. The questionnaire requested that she describe the nature of her injury, how the injury occurred, witness statements, the immediate effects of her injury, any other injuries sustained as a result of the incident, any prior similar injuries, the time of injury, whether she was on the employing establishment's premises when the injury occurred, whether she was performing her regularly assigned duties, and the activities she was engaged in at the time of injury. Appellant was afforded 30 days to provide the requested information.

The only evidence received in response to OWCP's development letter was a February 10, 2016 Penrose Hospital diagnostic report from Dr. Farrel Keith VanWagenen, a Board-certified diagnostic radiologist. Dr. VanWagenen reported that an x-ray of the right ankle revealed intraoperative views of the ankle, demonstrated screw and plate fixation of a trimalleolar ankle fracture with near anatomic alignment achieved.

By decision dated March 21, 2016, OWCP denied appellant's claim, finding that the evidence of record failed to establish that the February 3, 2016 employment incident occurred as alleged, in the performance of duty. It explained that she failed to establish fact of injury because she did not respond to the questionnaire that was sent with the February 18, 2016 development letter. OWCP further noted that the evidence of record failed to establish a firm medical diagnosis which could be reasonably attributed to the alleged February 3, 2016 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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 filed within the applicable time

limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

The Board has interpreted the phrase while in the performance of duty to be the equivalent of the commonly found requisite in workers' compensation law of arising out of and in the course of employment. In the course of employment deals with the work setting, the locale and time of injury whereas, arising out of the employment, encompasses not only the work setting but also a causal concept, the requirement being that an employment factor caused the injury. In addressing this issue, the Board has stated that in the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.[5]

The Board has included within the performance of duty a reasonable time before and after work to allow for coming and going, as well as personal ministrations, such as lunch or bathroom breaks, engaged in for the benefit of the employer. If the injury does not take place during those periods or on employing establishment premises, the Board will place special emphasis on whether the employee was engaged in an activity related to fulfilling the duties of her employment.[6]

ANALYSIS

The Board finds that appellant failed to establish that she sustained a traumatic injury in the performance of duty on February 3, 2016.[7]

Appellant alleged that on February 3, 2016 she slipped on a patch of ice on a sidewalk outside of the employing establishment at 6:30 a.m. and sustained a broken ankle. Her Form CA-1 lacks sufficient information to establish that the alleged incident occurred in the performance of duty.[8]

With regard to employees with fixed hours and a fixed place of work, the Board has accepted the general rule of workers' compensation law that injuries occurring on the premises

[3] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Kathryn S. Graham Wilburn*, 49 ECAB 458 (1998).

[6] *See Venicee Howell*, 48 ECAB 414 (1997); *Narbik A. Karamian*, 40 ECAB 617 (1989).

[7] *T.V.*, Docket No. 15-1336 (issued October 8, 2015).

[8] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

of the employing establishment, while the employees are going to and from work before or after working hours or at lunchtime, are compensable.[9]

By letter dated February 18, 2015, OWCP requested that appellant describe the factual circumstances of her injury and provided her with a questionnaire for completion. Appellant did not respond. The only explanation provided pertaining to the February 3, 2016 incident was the generalized and vague statement noted in her Form CA-1. Appellant's Form CA-1 lacks further insight to establish fact of injury and performance of duty.[10] By failing to describe the employment incident and circumstances surrounding her alleged injury, appellant has not established that the injury occurred in a time and place, where she was expected to be to fulfill her employment.

Appellant has therefore failed to provide an adequate description of the February 3, 2016 employment incident which she believed caused or aggravated her condition to establish that an injury occurred in the performance of duty.[11] Thus, she did not meet her burden of proof.[12]

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 did not meet her burden of proof to establish that she sustained an injury in the performance of duty on February 3, 2016.

[9] *See R.H.*, Docket No. 15-1339 (issued June 13, 2014).

[10] *Supra* note 7.

[11] The only medical report received was Dr. VanWagenen's February 10, 2016 diagnostic report pertaining to the right ankle. Given that appellant did not establish an employment incident, further consideration of the medical evidence is unnecessary. *See Bonnie A. Contreas*, 57 ECAB 364, 368 n.10 (2006).

[12] The Board notes that not only must appellant establish that an injury occurred in the performance of duty as alleged, but she must also establish that her disability and/or specific condition for which compensation is claimed are causally related to her injury by submitting rationalized medical opinion evidence. *Marie St. Clair*, Docket No. 03-1688 (issued September 10, 2003). Any medical opinion evidence appellant may submit to support her claim should reflect a correct history and offer a medically sound explanation by her physician of how the specific employment incident, in particular physiologically, caused or aggravated her ankle injury. *T.G.*, Docket No. 14-751 (issued October 20, 2014).

ORDER

IT IS HEREBY ORDERED THAT the March 21, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 4, 2016
Washington, DC

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

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

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