United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
and	)	**Docket No. 16-1206**
	)	**Issued: November 17, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Denver, 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 May 18, 2016 appellant filed a timely appeal from a February 19, 2016 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 over the merits of this case.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a right ankle sprain in the performance of duty on December 19, 2015.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its February 19, 2016 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision and therefore, this additional evidence cannot be considered on appeal. 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 December 19, 2015 appellant, then a 56-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that same date she sustained a right ankle sprain when she descended porch steps while delivering mail. Appellant noted that the injury occurred at 4:00 p.m. at a specific address. On the reverse side of the claim form, appellant's supervisor checked the box marked "no" when asked if his knowledge of the facts about the injury agreed with the employee's statement. The supervisor explained that appellant had noted that the customer had heard the snap of her ankle and saw her fall to the ground, but he had not yet conducted an interview with the customer.

By letter dated January 14, 2016, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised as to the medical and factual evidence required to support her claim and was afforded 30 days to provide the requested evidence. Specifically OWCP noted that the evidence was insufficient to establish that she actually experienced the incident or employment factor alleged to have caused injury as there was no diagnosis of any condition, nor was there a physician's opinion as to the cause of her injury. It provided a questionnaire for completion requesting that appellant describe the immediate effects of the injury and what she did thereafter; describe her condition between the date of injury and the date she first received medical attention; whether she sustained any other injury, either on or off duty, between the date of injury and the date it was first reported; the nature and frequency of any home treatment; whether she had any similar disability or symptoms prior to the injury; and to provide statements from any persons who witnessed her injury or had immediate knowledge of it. She was provided 30 days to provide the requested information.

In support of her claim, appellant submitted medical reports and duty status reports (Forms CA-17) dated December 23, 2015 through January 4, 2016 from Dr. Kathy Vidlock, Board-certified in family medicine, documenting appellant's treatment for a right ankle injury. In her report dated December 23, 2015, Dr. Vidlock noted that appellant reported that the injury occurred at work on December 19, 2015 after she had delivered a package on a customer's porch. As she was descending the stairs, her ankle popped out to the right, over the edge of a step, causing her to fall. Review of a December 19, 2015 x-ray of the right ankle revealed no fractures or bony abnormality. Dr. Vidlock provided physical examination findings and diagnosed right ankle sprain. In a report dated January 25, 2016, he related appellant's examination findings and concluded that appellant's right ankle still caused occasional pain, but was back to full range of motion and strength.

A January 19, 2016 employing establishment form was submitted documenting appellant's resignation.

By decision dated February 19, 2016, OWCP denied appellant's claim, finding that the evidence of record failed to establish that the December 19, 2015 employment incident occurred at the time, place, and in the manner alleged. It noted that she failed to establish fact of injury because she did not respond to the questionnaire that was sent with the January 14, 2016 development letter.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 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]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[5] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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 her subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[6]

When an employee claims that she sustained an injury in the performance of duty she must submit sufficient evidence to establish that she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. She must also establish that such event, incident, or exposure caused an injury.[7] Once an employee establishes that she sustained an injury in the performance of duty, she has the burden of proof to establish that any subsequent medical condition or disability for work, for which she claims compensation is causally related to the accepted injury.[8]

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

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

[5] *Elaine Pendleton*, *supra* note 3.

[6] *Betty J. Smith*, 54 ECAB 174 (2002).

[7] *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined).

[8] *Supra* note 3.

ANALYSIS

The Board finds that appellant has established that she sustained the December 19, 2015 employment incident as alleged. The evidence of record does not contain any inconsistencies sufficient to cast doubt that the alleged incident occurred.

Appellant has provided sufficient detail to establish the traumatic incident.[9] On her Form CA-1, appellant stated that she sustained a right ankle sprain when she descended porch steps while delivering mail. Appellant provided the exact time and address of the incident.[10] She also filed her claim on the same date.[11] The record indicates that appellant was seen in a hospital emergency room and an x-ray was taken of appellant's right ankle on the date of injury.[12] Appellant's supervisor did not directly controvert appellant's claim, but rather indicated that he had not yet investigated the alleged incident. The Board also notes that Dr. Vidlock described the December 19, 2015 employment incident in her reports of record. Under the circumstances of this case, the Board finds that appellant's allegations have not been refuted by strong or persuasive evidence and there are insufficient inconsistencies to cast serious doubt on whether an incident occurred.[13]

Appellant did submit medical evidence to the record from Dr. Vidlock which related a diagnosis of right ankle sprain. As OWCP has not yet evaluated the medical evidence, the case will be remanded to OWCP for evaluation of the medical evidence to determine whether she sustained a medical condition and/or disability due to the December 19, 2015 work incident. After such further development deemed necessary, OWCP shall issue a *de novo* decision.[14]

CONCLUSION

The Board finds that appellant has established that the alleged incident occurred at the time, place, and in the manner alleged. The case is not in posture for decision as to whether appellant sustained a right ankle sprain causally related to the accepted December 19, 2015 employment incident.

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

[10] *Supra* note 7.

[11] *Supra* note 6.

[12] *Id.*

[13] *R.W.*, Docket No. 14-1816 (issued February 9, 2015); *D.B.*, Docket No. 14-924 (issued November 3, 2014).

[14] *C.V.*, Docket No. 15-0615 (issued September 13, 2016).

ORDER

IT IS HEREBY ORDERED THAT the February 19, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development of the medical evidence consistent with this opinion.

Issued: November 17, 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