

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

M.S., Appellant)

and)

DEPARTMENT OF THE AIR FORCE, AIR)
FORCE TECHNICAL APPLICATIONS)
CENTER, PATRICK AIR FORCE BASE, FL,)
Employer)

**Docket No. 16-1039
Issued: June 23, 2017**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 20, 2016 appellant filed a timely appeal from an April 4, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish an injury in the performance of duty on April 24, 2015, as alleged.

FACTUAL HISTORY

On May 6, 2015 appellant, then a 40-year-old information technology (IT) specialist (network warfare), filed a traumatic injury claim (Form CA-1) for a lower back injury she

¹ 5 U.S.C. § 8101 *et seq.*

allegedly sustained on April 24, 2015 while moving computers from one desk to another and “must have hurt [her] back with all the bending forward to get under the desk to connect the computers.” Appellant further indicated that a short time later, she experienced nerve pain in her left leg. She surmised that she had either pinched her sciatic nerve or that the left leg pain was due to a disc injury. Appellant stopped work on April 24, 2015 and resumed work on April 28, 2015.

Medical reports dated April 28, 29, 30, May 1, 5, 18, and 21, 2015 from Dr. Susan V. Ville, a chiropractor, were received, which noted appellant’s treatment for lower back pain, with referred pain into the left lower extremity. In her April 28, 2015 report, Dr. Ville indicated that x-rays performed that day revealed normal osseous integrity, with a slight left lateral list from L5 cephalad. Sacroiliac (S1) joints were clear and other findings were within normal limits. An impression was provided of left lumbar radiculitis, lumbalgia, lumbar facet syndrome, left sacroiliac syndrome, and possible lumbar intervertebral disc disorder. It was recommended that appellant consult with Dr. Steven G. Ortiz, an orthopedic surgeon, for a second opinion and consideration of medication and/or injection. No history of injury was provided in any of the reports.

Medical reports from Dr. Ortiz dated May 4, June 5 and 9, July 8 and 15, 2015 were received. In his May 4, 2015 report, Dr. Ortiz noted that appellant had several weeks of low back pain and left lower extremity radiating pain, which first occurred a few months ago and only lasted a day before the symptoms resolved. The initial onset of pain was mostly shooting down from the low back, through the buttock, and into the posterior thigh. However, the latest onset of pain travelled all the way down into the lateral foot, in the sole of the foot through the posterior thigh and calf. Currently, appellant also complained of numbness and tingling along the same distribution. Dr. Ortiz specifically noted that she “did not recall a specific accident or injury that caused this.” He also noted that, other than therapy with Dr. Ville, appellant had not undergone any other treatment. Dr. Ortiz reported findings on physical examination, and noted that appellant’s April 29, 2015 lumbar x-rays were normal. He recommended a lumbar magnetic resonance imaging (MRI) scan. Dr. Ortiz indicated that appellant likely had an L5-S1 disc herniation in the lateral recess, which caused S1 nerve root impingement on the left. He recommended epidural steroid injections, which were administered on June 5 and 9, 2015.

A July 8, 2015 lumbar MRI scan revealed L5-S1 disc desiccation with mild disc space narrowing. In his July 15, 2015 follow-up report, Dr. Ortiz reviewed appellant’s recent lumbar MRI scan and recommended laminotomy and discectomy at L5-S1 on the left.

A January 7, 2016 lumbar MRI scan noted that appellant had undergone a lumbar microdiscectomy on October 29, 2015. The most recent MRI scan revealed L5-S1 postsurgical changes of laminectomy with mild subcutaneous edema/granulation tissue, left paracentral/foraminal disc herniation with abutment of the traversing left S1 nerve root in the lateral recess, moderate left neural foraminal narrowing, trace facet joint effusions, and mild-to-moderate degenerative endplate changes. At L4-L5 there was also evidence of trace facet joint effusions and mild degenerative endplate changes, as well as a small broad-based disc bulge.

On January 20, 2016 appellant filed a claim for compensation (Form CA-7) for intermittent wage loss during the period June 9 through November 6, 2015.

In a letter dated March 1, 2016, OWCP noted that payment of a limited amount of medical expenses had been administratively approved because as appellant's claim appeared to be a minor injury that resulted in minimal or no lost time from work and the employing establishment had not controverted the claim. It noted that her claim was reopened for consideration as a claim for wage-loss consideration (Form CA-7) had been received. OWCP advised appellant of the deficiencies in the claim and provided her the opportunity to submit additional factual and medical evidence. Appellant was asked to provide a written statement which described in detail the alleged work injury and surrounding circumstances. She was also advised to provide medical evidence from a qualified physician, which provided a firm diagnosis and explained with medical rationale how her federal work duties on the date in question caused an injury. Appellant was afforded 30 days to provide such evidence.

Appellant did not provide the requested narrative statement regarding the events surrounding her claimed injury, but OWCP did receive additional medical evidence, which included an October 17, 2015 report from Dr. Devin Kumar Datta, a Board-certified orthopedic surgeon. Dr. Datta reported that appellant sustained a work-related injury back in April (2015) when she was "awkwardly lifting and moving something ... [and experienced] a sudden pop in her back," with an acute onset of back pain that went down the left buttock and left leg. Since then, appellant's pain had progressively worsened. Dr. Datta indicated that appellant was trying to hold off on surgery as long as possible, but her pain was bothering her on almost a daily basis, and it had gotten to the point where it was no longer tolerable. He further noted that prior to this "acute event" (April 2015), appellant did not have a "longstanding history of chronic back problems or any issues with her back..." Dr. Datta diagnosed chronic back and left leg pain, large extruded left L5-S1 disc herniation, and mild disc desiccation at L4-L5 and L5-S1. He recommended left L5-S1 microdiscectomy.

Appellant underwent surgery on October 29, 2015. The operative report was not submitted into the record. However, OWCP received a copy of appellant's presurgical and postoperative instructions. Appellant also submitted an undated work excuse from Dr. Ortiz, with light/limited-duty work restrictions effective November 9, 2015.

By decision dated April 4, 2016, OWCP denied appellant's traumatic injury claim because the evidence of record was insufficient to establish that the event(s) occurred as alleged. It noted that the Form CA-1 description of the event did not suffice, and appellant had not responded to its March 1, 2016 inquiry regarding the claimed work injury. OWCP further found that appellant had not submitted any medical evidence to establish that a diagnosed medical condition was causally related to the work injury or event.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish 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

² *Supra* note 1.

disability and/or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of each and every claim regardless of whether it claim is predicated on a traumatic injury or an occupational disease.⁴

Under FECA, a traumatic injury is defined 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.⁵

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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁶ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.⁷

An employee's statement 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.⁸ Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such 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 doubt on an employee's statement in determining whether a prima facie case has been established.⁹

ANALYSIS

On her Form CA-1 appellant alleged that she must have reinjured her back on April 24, 2015 while moving computers from one desk to another, as she had to bend forward to get under the desk to connect the computers. A short time later, she developed back pain which extended into her left leg. Appellant did not provide any additional details of her injury. In a March 1, 2016 letter, OWCP requested that appellant provide a detailed description as to how the injury

³ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁴ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *T.H.*, 59 ECAB 388 (2008).

⁷ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁸ *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

⁹ *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

occurred. Appellant did not respond to OWCP's questions. As such, the only factual information regarding the alleged injury was appellant's statement that she was moving her computers from one desk to another and must have hurt her back bending forward to get under the desk to connect the computers. OWCP denied the claim, finding that appellant had not established that the claimed event occurred as alleged.

As appellant did not respond to OWCP's request for additional factual information pertaining to the claimed work incident, the Board finds that appellant's statements contained in her Form CA-1 are alone insufficient to establish fact of injury.¹⁰ Appellant used speculative language on her Form CA-1 stating that she "must have hurt her back" when bending forward to connect computers. No history of injury was provided in any of Dr. Ville's reports and Dr. Ortiz's May 4, 2015 report noted that appellant did not recall a specific accident or injury that caused her pain. In an October 17, 2015 report, Dr. Datta stated that appellant was awkwardly lifting and moving "something" when she experienced a sudden pop in her back and started having an acute onset of back pain. Additionally, appellant did not provide the factual statement requested by OWCP or any evidence explaining how she arrived at her conclusion that she hurt her back on April 24, 2015. As noted above, it is appellant's burden of proof to provide sufficient evidence to establish that she experienced the identified work factors as alleged. The Board finds that appellant has not met her burden of proof.

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.

¹⁰ See A.S., Docket No. 16-0944 (issued November 2, 2016).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on April 24, 2015, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 23, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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