

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

S.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Oakland, CA, Employer**

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**Docket No. 17-0261
Issued: May 24, 2017**

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 November 15, 2016 appellant filed a timely appeal from a September 30, 2016 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On August 9, 2016 appellant, then a 43-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 3, 2016 she sustained a left ankle and right wrist injury. She reported that at approximately 1:30 p.m. she was ascending stairs to deliver mail on

¹ 5 U.S.C. § 8101 *et seq.*

a porch. Appellant turned to descend down the stairs when she was startled by a dog, causing her to lose her balance and fall on the driveway. She stopped work and notified her supervisor on August 6, 2016.

In an August 6, 2016 work status form, appellant was restricted to limited duty with no weight bearing on the left ankle.

By letter dated August 22, 2016, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the factual and medical evidence needed and asked to respond within 30 days. OWCP provided a development questionnaire for completion and requested that she submit a response in order to substantiate the factual basis of her claim.

In an August 6, 2016 diagnostic report, Dr. David Ludwig, a Board-certified radiologist, reported that an x-ray of the left ankle was normal with no fracture or dislocation.

In an undated narrative statement, appellant reported that on August 3, 2016 at 1:30 p.m. she sustained an injury when walking up four steps to deliver mail at a residence. The owners of the residence had a large dog that barked and hit the security door whenever she delivered mail. On the date of injury, appellant came to the door to deliver mail and as she was turning around to leave, she was startled by the dog and lost her balance, causing her to fall down the stairs. The owner of the residence came out to make sure she was okay. Appellant reported that her ankle and wrist were very sore, but she thought she would be fine. She returned to work the following day and notified her supervisor that her ankle was still sore from the fall. Appellant requested help with her route. Her pain continued to worsen, causing her to seek medical treatment on August 6, 2016.

In another narrative statement, appellant described her medical treatment for her injury explaining that she visited urgent care on August 6, 2016 due to her left ankle complaints. On August 12, 2016 she went to a follow-up appointment with her primary physician Dr. Amita Sharma, a family medicine practitioner. On August 15, 2016 appellant sought treatment with Dr. Jonathan Wang, an osteopathic family practitioner.

In an August 30, 2016 narrative statement, appellant described the circumstances of her injury, explaining that she walked up four steps leading to a mailbox. After delivering the mail, she turned to pivot on her left foot because she thought the dog in the house might come out, causing her to fall. Appellant complained of left ankle and right wrist soreness. When the pain in her ankle worsened, she sought treatment on August 6, 2016.

In an August 16, 2016 form, Dr. Wang, a treating orthopedic surgeon, reported that appellant sustained an injury on August 3, 2016 and sought treatment at an urgent care facility on August 6, 2016. He reported that she sustained a sprain of the left ankle and restricted her from work through September 16, 2016.

In an August 26, 2016 diagnostic report, Dr. Richard Hong, a Board-certified radiologist, reported that a magnetic resonance imaging scan of the left foot was unremarkable, noting mild degenerative changes and miniscule plantar calcaneal spur.

By decision dated September 30, 2016, OWCP denied appellant's claim, finding that the evidence of record failed to establish that the August 3, 2016 employment incident occurred as alleged. It noted that she failed to respond to the specific questions posed in the August 22, 2016 development letter.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 disability or specific condition for which compensation is claimed are causally related to the employment injury.² 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.³

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.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he or 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. The employee must also establish that such event, incident, or exposure caused an injury.⁵ Once an employee establishes that he or she sustained an injury in the performance of duty, they have the burden of proof to establish that any subsequent medical condition or disability from work is causally related to the accepted injury.⁶

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 his or 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

² *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *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). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

⁶ *Supra* note 4.

the employee's statements. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁷

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such a causal relationship.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁹

ANALYSIS

Appellant must prove her employment, the time, place, and manner of injury, a resulting personal injury, and that her injury arose in the performance of duty. In its September 30, 2016 decision, OWCP found that she did not establish that the incident occurred at the time, place, or in the manner alleged. The Board finds, however, that the evidence of record is sufficient to establish that the August 3, 2016 incident occurred, as alleged.¹⁰

Appellant alleged that on August 3, 2016, she fell down stairs when she was startled by a dog while delivering mail. Her Form CA-1 explained that at 1:30 p.m., she was climbing steps to deliver mail on the porch. As appellant turned to descend the stairs, she was startled by a dog, causing her to lose her balance and fall. She reported soreness in her left ankle and right wrist.

By letter dated August 22, 2016, OWCP requested appellant respond to a development questionnaire and provide more details pertaining to her injury. Appellant provided three narrative statements following OWCP's development letter describing in detail the circumstances surrounding her injury. These three narrative statements, along with her Form CA-1, show a consistent account of the alleged August 3, 2016 incident. Appellant has provided details regarding the time and place of the alleged injury. She has also consistently related that she fell down steps after being surprised by the homeowner's dog. Appellant has explained that she sought medical treatment on August 6, 2016 when her ankle pain continued to worsen. As such, her statements do not contain inconsistencies that cast serious doubt on the validity of the claim.¹¹

⁷ *Betty J. Smith*, 54 ECAB 174 (2002).

⁸ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁹ *James Mack*, 43 ECAB 321 (1991).

¹⁰ *R.M.*, Docket No. 12-1448 (issued December 4, 2012).

¹¹ *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

Appellant responded to OWCP's development questionnaire and further noted the dates of treatment, her physicians, and corresponding addresses. While she complained of left ankle and right wrist soreness on the date of injury, her subsequent statements indicate that her left ankle pain worsened causing her to seek medical treatment on August 6, 2016. The subsequent medical reports document treatment for the left ankle only. Contrary to the findings made in the September 30, 2016 OWCP decision, appellant did specify the specific body part injured during the August 3, 2016 employment incident. Thus, the Board finds that, given the above referenced evidence, appellant has alleged with specificity that the incident occurred at the time, place, and in the manner alleged.¹²

As there is no dispute that appellant fell down the stairs while delivering mail on August 3, 2016, the Board finds that the first component of fact of injury, the claimed incident, occurred as alleged.¹³ Given that she has established that the August 3, 2016 employment incident occurred as alleged, the question becomes whether this incident caused her an injury. As OWCP found that appellant did not establish fact of injury, it did not analyze or develop the medical evidence.¹⁴ Thus, the Board will set aside OWCP's September 30, 2016 decision and remand the case for further action.¹⁵ After further development as deemed necessary, OWCP shall issue a *de novo* final decision on appellant's traumatic injury claim.

CONCLUSION

The Board finds that the record establishes that the August 3, 2016 employment incident occurred as alleged, but the case is not in posture with regard to the medical evidence. On remand, OWCP will consider the medical evidence and issue a *de novo* decision.

¹² See *Willie J. Clements*, 43 ECAB 244 (1991).

¹³ *James R. Flint*, Docket No. 05-0587 (issued June 10, 2005).

¹⁴ *R.W.*, Docket No. 11-0362 (issued October 24, 2011).

¹⁵ *T.F.*, Docket No. 12-0439 (issued August 20, 2012).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decision dated September 30, 2016 is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: May 24, 2017
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