United States Department of Labor
Employees' Compensation Appeals Board

T.M., Appellant	)	
and	)	**Docket No. 17-1194**
	)	**Issued: February 4, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Charlotte, NC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 8, 2017 appellant filed a timely appeal from a November 9, 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 has met her burden of proof to establish an injury in the performance of duty on November 22, 2012, as alleged.

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[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On September 25, 2015 appellant, then a 54-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging an aggravation of a preexisting injury on November 22, 2012, while in the performance of duty. She alleged that she was pinned to the back of her long life vehicle (LLV) when a caster wheel fell off the sidewalk, causing mail and "approximately 1,100 pounds of weight to fall against her." Appellant did not stop work.

Appellant further explained in an undated narrative statement that on November 22, 2012, an over 1,000-pound caster and mail fell on her neck, shoulders, and chest. She indicated that she had photographs of a dent in the LLV made by the falling caster.[3]

In an April 27, 2015 memorandum in response to a light-duty request, the employing establishment indicated that appellant had been out of work since March 19, 2014 and it did not have any available work that would accommodate her restrictions. It was also noted that appellant advised the employing establishment of an upcoming physician's appointment scheduled for April 30, 2015. The employing establishment indicated that it could revisit any available work to offer appellant after she supplied her most recent medical documentation detailing her restrictions.

In an undated report, Dr. Douglas Chen, a family practitioner, indicated that appellant had a series of injuries. He noted that she sustained traumatic injuries at work due to a fall onto concrete, a fall down stairs, an LLV slamming shut on her hand, and two dog attacks. Dr. Chen found that appellant had compromised disc damage and impingements, but she continued to work, which included lifting, bending, stooping, and carrying weight-bearing loads. He opined that this continued activity caused her total loss of alignment in the cervical, thoracic, lumbar, and sacral spine and was also the reason why she had a loss of complete balance and control, as well as nerve, muscle, and tissue damage. Dr. Chen asserted that appellant's injuries were caused by traumatic events she sustained while at work, including repetitive lifting after sustaining the injuries. He noted that her carpal tunnel condition was worsened when the door was slammed on her hand. Dr. Chen also diagnosed Schmori's nodes, which he indicated were chronic and would only worsen as appellant continued her current job.

In a separate undated report, Dr. Chen noted again that in 2012 appellant had a piece of heavy equipment go off the sidewalk and pin against her neck and shoulders as she was trying to keep the mail from falling off. He noted that she took photographs of the dent the caster made in her LLV, not realizing the extent of her own injuries. Dr. Chen reported that there were multiple eyewitnesses to this event and appellant remarked that, "[i]f it dented the truck, what could it have done to my neck?" After the fall, appellant reportedly collected 16 trays of catalogs off the ground to recase them, which he opined had exacerbated her conditions.

On August 23, 2014 Dr. Chen diagnosed spondylosis, degenerative disc disease of the cervical spine, and a bulging disc in five significant areas (mild to moderate). He opined that appellant's diagnosis of carpal tunnel syndrome was likely exacerbated by her upper cervical

[3] Appellant also submitted an August 13, 2013 narrative statement regarding a separate traumatic injury claim, assigned OWCP File No. xxxxxx192.

issues and caused further pain throughout her spine down to the lower lumbar and sacral areas, as well as her arms, shoulder, and wrists.

In a second report dated August 23, 2014, Dr. Chen noted that appellant had been seen in his office routinely since mid-March and had been seen by specialists. Appellant was diagnosed with spondylosis, degenerative disc disease of the cervical spine, a bulging disc in five significant areas (mild to moderate), and carpal tunnel syndrome, which was likely exacerbated by her upper cervical condition. Dr. Chen noted that he concurred with Corrine E. Weaver, D.C., appellant's chiropractor, who noted that she should be on limited duty with no lifting over 20 pounds.

In a May 4, 2015 report, Dr. Weaver diagnosed subluxation at C1-7, degeneration of the cervical intervertebral disc, subluxation at L1-5, and lumbago. She released appellant to work under the condition that appellant would hold her spinal alignment for more than four weeks. If Dr. Weaver was unable to do so, appellant would be placed on a restriction of no lifting over 20 pounds.

On July 13, 2015 Dr. Chen released appellant to full-time work without restrictions effective July 12, 2015.

In a March 11, 2016 report, Dr. Chen reiterated that appellant was injured when "[appellant] had a piece of heavy equipment pin her to the LLV when it went off the sidewalk."

On May 4, 2016 Dr. Chen requested that appellant be allowed late arrivals to work due to her medical conditions.

In an October 4, 2016 development letter, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries. Appellant did not respond.

By decision dated November 9, 2016, OWCP denied the claim because the evidence of record failed to establish that the injury and/or events occurred on November 22, 2012, as alleged.

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 timely filed within the applicable time limitation period of FECA, that an injury[4] was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5]

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[4] OWCP regulations define 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. 20 C.F.R. § 10.5(ee).

[5] *See T.H.*, 59 ECAB 388, 393 (2008).

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. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that a medical condition relates to the employment incident.[6]

An employee has the burden of proof to establish the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his or her subsequent course of action.[7] 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. Such circumstances 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 sufficient doubt on an employee's statement in determining whether a *prima facie* case has been established. An employee's statement alleging 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]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on November 22, 2012, as alleged.

The Board finds that the weight of the evidence establishes that the employment incident of November 22, 2012, did not occur as alleged.[9] Dr. Chen described the alleged occurrence when a purple caster fell off the sidewalk and pushed against appellant's neck and shoulders, pinning her to an LLV. The Board finds, however, that these statements are insufficient to establish her claim because his reports are not contemporaneous with the alleged work incident and he failed to identify specific details of the time and location of the incident in question. Dr. Chen noted that there were multiple eyewitnesses to this event and appellant stated, "If it dented the truck, what

[6] *Id.*

[7] *See Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995).

[8] *See Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

[9] *See A.B.*, Docket No. 14-0522 (issued November 9, 2015) (fact of injury not established where there was substantial inconsistency between the employee's account of events and the accounts of coworkers and supervisor with regard to the time and place of his alleged injury); *V.J.*, Docket No. 13-1460 (issued January 7, 2014) (claimed incident not established where employing establishment investigation revealed inconsistencies between the employee's account of the claimed incident and those of coworkers); *J.W.*, Docket No. 12-0926 (issued October 1, 2012) (claimed incident not established where there were inconsistencies between the employee's statements and evidence at the scene of the alleged incident).

could it have done to my neck?" However, there is no corroborating evidence to establish that appellant actually made this statement.[10] Moreover, the record is devoid of any witness statements corroborating her claim that more than 1,000 pounds of weight fell on her at work on November 22, 2012.

The Board further finds that appellant failed to timely report the incident and the remaining medical evidence is not contemporaneous with the alleged employment incident. Appellant filed her claim for a traumatic injury in September 2015, alleging that the injury occurred in November 2012, almost three years prior to the filing. Additionally, OWCP notified her of the deficiencies of her claim, in an October 4, 2016 development letter, and afforded her 30 days to submit additional evidence and respond to its inquiries. However, appellant did not respond to OWCP's inquiries or submit any additional evidence in support of her claim. Since she failed to establish the first component of fact of injury, it is unnecessary to discuss whether she submitted medical evidence sufficient to establish that a medical condition existed and whether the condition was causally related to the employment factors alleged.[11] Thus, the Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on November 22, 2012, as alleged.

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 has not met her burden of proof to establish an injury in the performance of duty on November 22, 2012, as alleged.

[10] *See K.A*, Docket No. 15-0684 (issued August 27, 2015) (where the claimant submitted a witness statement from his coworker who advised that another coworker had stated that B.T. was trying to get him fired, the Board found that there was not corroborating evidence to establish that B.T. actually made this statement).

[11] As appellant failed to establish that the claimed event occurred as alleged, it is not necessary to discuss the probative value of medical evidence. *See S.S.*, Docket No. 18-0242 (issued June 11, 2018); *S.J.*, Docket No. 17-1798 (issued February 23, 2018).

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2019
Washington, DC

Christopher J. Godfrey, 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