

her relay and then called her supervisor. On the reverse side of the claim form appellant's supervisor acknowledged that appellant was injured in the performance of duty and indicated that she stopped work on the alleged date of injury.

In a narrative statement dated January 19, 2021, appellant explained that as she walked down steps she twisted her ankle and heard it pop. She finished her relay, but could not apply too much pressure to the left foot. After she finished her relay, appellant reported her injury to her manager and requested medical treatment.

Appellant submitted a duty status report (Form CA-17) dated January 19, 2021 from Dr. Francis Aona, a Board-certified family practitioner, wherein he related that appellant was seen for a left ankle sprain, which occurred that day as she was descending stairs.

In a development letter dated January 26, 2021, OWCP informed appellant that additional evidence was necessary to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received medical reports dated January 21 and February 4 and 17, 2021 from Dr. Kevin J. Kolovich, a Board-certified orthopedic surgeon. Dr. Kolovich related that appellant twisted her ankle on a step when delivering mail on January 19, 2021. He explained that she was treated at a hospital emergency room on January 19, 2021 and was placed in an Ace wrap and air cast for support.

OWCP also received letters dated January 21 and February 4, 2021 from Michael W. Koenig, a physician assistant, which stated that appellant was seen at the clinic and excused from work.

In a letter dated February 2, 2021, appellant's supervisor, Postmaster K.L., controverted appellant's claim. She related that she had observed appellant on her route until 1:52 p.m. While appellant related that she twisted her ankle at approximately 1:00 p.m., she did not deliver mail to that address until 2:17 p.m. K.L. noted that appellant called the employing establishment at 2:40 p.m. to report that she twisted her ankle. She related that she took photographs of appellant's ankle and that appellant did not have any difficulty twisting her ankle for the photographs. K.L. also related that the resident did not see appellant limp nor use the steps. She submitted photographs of several homes with steps and pictures of appellant's ankle.

Appellant submitted a response to OWCP's development questionnaire, which was received on February 6, 2021. She attested that on January 19, 2021, after she delivered mail, and as she descended stairs, she twisted her ankle on the second to last step. Appellant explained that she limped the rest of her relay and when she got back to her truck she used her telephone to call her supervisor, she also explained that, as she was in training, she was not allowed to carry her cell phone on her route. She related that she sought treatment at the hospital after her supervisor arrived and took pictures.

By decision dated March 15, 2021, OWCP denied appellant's claim, finding that appellant had not established that the January 19, 2021 incident occurred, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,³ that an injury 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.⁴ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.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 he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.⁶

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, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁷ The employee has not met his or her burden of proof of establishing 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 serious doubt on an employee's statements in determining whether a 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

² *Id.*

³ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *See J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

⁸ *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

ANALYSIS

The Board finds that appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on January 19, 2021, as alleged.

Appellant has consistently reported that on January 19, 2021 she twisted her left ankle as she walked down steps while in the performance of duty. She has explained that she finished her relay and then called her supervisor to inform her of the injury. Appellant stated that she did not call right away because she was not allowed to carry her cell phone on her route as a trainee and her telephone was in her truck. She submitted a detailed account of the January 19, 2021 employment incident in her response to OWCP's development questionnaire, received on February 6, 2021, which was consistent with the account she provided on her claim form. The evidence of record also establishes that appellant thereafter sought immediate medical care on January 19, 2021 for her left ankle.

The injuries appellant claimed are consistent with the facts and circumstances she set forth, her course of action, and the medical evidence she submitted regarding her care on January 19, 2021 and thereafter. An employee's statements 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.⁹ The Board, thus, finds that appellant has met her burden of proof to establish that the January 19, 2021 employment incident occurred in the performance of duty, as alleged.

As appellant has established that the January 19, 2021 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.¹⁰ Since OWCP found that appellant had not established fact of injury, it did not evaluate the medical evidence. The Board, therefore, will set aside OWCP's March 15, 2021 decision and remand the case for consideration of the medical evidence of record.¹¹ After such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish an injury causally related to the accepted January 19, 2021 employment incident.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on January 19, 2021, as alleged. The Board further finds that this case is not in posture for decision regarding whether she has established an injury causally related to the accepted January 19, 2021 employment incident.

⁹ See *supra* note 8.

¹⁰ See *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

¹¹ *S.M.*, Docket No. 16-0875 (issued December 12, 2017).

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2021 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 22, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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