

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

_____)
G.H., Appellant)

and)

U.S. POSTAL SERVICE, GRANITE CITY)
POST OFFICE, Granite City, IL, Employer)
_____)

Docket No. 22-0876
Issued: December 2, 2022

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On May 20, 2022 appellant filed a timely appeal from an April 21, 2022 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 the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on February 5, 2022, as alleged

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¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the April 21, 2022 decision, appellant submitted additional evidence to OWCP. 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 additional evidence for the first time on appeal. *Id*

FACTUAL HISTORY

On March 3, 2022 appellant, then a 53-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 5, 2022 she injured her right knee, right hip and back while in the performance of duty. She explained that, as she was delivering mail, she exited the vehicle and “went to step up on the sidewalk my right [foot] didn’t move as fast the other it hit the sidewalk and I flew forward landing on my knees.” Appellant stopped work on February 5, 2022 and returned on February 7, 2022. On the reverse side of the claim form appellant’s supervisor, R.B., acknowledged that appellant was in the performance of duty when injured.

In a handwritten statement dated February 5, 2022, appellant recounted that at approximately 3:23 p.m. she exited the vehicle to deliver mail and when she went to step up on the sidewalk, her right foot would not move, causing her to fall forward onto her knees. She reported that she immediately contacted the office and informed her supervisor that she was returning. Appellant explained that her right knee, right foot, right hip, and back were painful.

In a March 16, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for completion. OWCP afforded appellant 30 days to provide the necessary evidence.

OWCP received a March 15, 2022 authorization for examination and/or treatment (Form CA-16) executed by the employing establishment. In an attending physician’s report, Part B of a Form CA-16 dated March 23, 2022, Dr. Daniel Thomas, a podiatrist, described the history of injury as “appellant tripped forward while delivering mail.” He diagnosed right foot sprain. Dr. Thomas checked a box marked “Yes” indicating that the condition was caused or aggravated by the described employment activity.

In an April 14, 2022 response to OWCP’s development questionnaire, appellant indicated that on July 15, 2019 she originally hurt her foot while delivering mail on her route. She noted that she received medical treatment and returned to work. Appellant explained that, after walking for a week, she began to experience severe foot pain again.

By decision dated April 21, 2022, OWCP denied appellant’s traumatic injury claim, finding that the evidence of record was insufficient to establish that the February 5, 2022 employment incident and/or events occurred as alleged. It noted that the evidence on file indicated that appellant did not report the incident for approximately one month and did not seek medical attention for nearly two months after the alleged incident. Consequently, OWCP found that she had not met the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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

³ *Supra* note 1.

limitation of FECA,⁴ 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.⁵ 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.⁶

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. The first component is that 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 and can be established only by medical evidence.⁷

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.⁸ The employee has not met his or her burden of proof 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 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 serious doubt on an employee's statement in determining whether a *prima facie* case has been established.⁹ 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.¹⁰

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 February 5, 2022, as alleged.

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁸ *S.W.*, Docket No. 17-0261 (issued May 24, 2017).

⁹ *C.M.*, Docket No. 20-1519 (issued March 22, 2019); *S.A.*, Docket No. 19-0613 (issued August 22, 2019); *Betty J. Smith*, 54 ECAB 174 (2002).

¹⁰ *A.C.*, Docket No. 18-1567 (issued April 9, 2019); *D.B.*, 58 ECAB 529 (2007); *Gregory J. Reser*, 57 ECAB 277 (2005).

In her March 3, 2022 Form CA-1, appellant described that on February 5, 2022 she went to step up on the sidewalk after exiting her vehicle when her foot hit the sidewalk and she fell down onto her knees. She also submitted a February 5, 2022 statement, which indicated that at approximately 3:23 p.m., she exited her vehicle and went to step up on the sidewalk, but her right foot would not move, causing her to fall forward. Appellant's supervisor, R.B., acknowledged on the reverse side of the claim form that appellant was injured in the performance of duty. OWCP also received a Part B of a Form CA-16 dated March 23, 2022, which indicated that appellant tripped forward when she was delivering mail.

As noted, 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.¹¹ Appellant has consistently maintained that her injury occurred when she tripped on a sidewalk and fell onto her knees on February 5, 2022 while delivering mail. Therefore, the Board finds that appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on February 5, 2022, as alleged.¹²

As appellant has established that an incident occurred in the performance of duty on February 5, 2022, as alleged, the question becomes whether the incident caused an injury.¹³ As OWCP found that she had not established fact of injury, it did not evaluate the medical evidence. The case must, therefore, be remanded for consideration of the medical evidence of record.¹⁴ After any further development 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 February 5, 2022 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 February 5, 2022, 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 February 5, 2022 employment incident.

¹¹ *Id.*

¹² *See J.V.*, Docket No. 21-0029 (issued April 15, 2022); *C.B.*, Docket No. 21-0670 (issued January 27, 2022).

¹³ *C.B.*, Docket No. 21-0554 (issued June 21, 2022); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

¹⁴ *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

ORDER

IT IS HEREBY ORDERED THAT the April 21, 2022 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 2, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board