United States Department of Labor
Employees' Compensation Appeals Board

A.T., Appellant	)	
and	)	**Docket No. 22-1103**
	)	**Issued: December 2, 2022**
DEPARTMENT OF COMMERCE, U.S. CENSUS BUREAU, NEW YORK REGIONAL OFFICE, Saint Albans, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On July 22, 2022 appellant, through counsel, filed a timely appeal from a June 7, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on August 29, 2020, as alleged.

FACTUAL HISTORY

On August 31, 2020 appellant, then a 61-year-old miscellaneous clerk, filed a traumatic injury claim (Form CA-1) alleging that on August 29, 2020 at 5:10 p.m. she severely sprained her right ankle and bruised her knees while in the performance of duty. She explained that, after ringing a customer's doorbell without response, she descended three stairs, and fell on missing concrete at the last stair, landing on the cement sidewalk. Appellant stopped work on August 29, 2020. On the reverse side of the claim form, her supervisor, L.P., indicated by checking a box marked "No" that she was not injured in the performance of duty. She further reported that, although appellant worked on August 29, 2020, hospital records indicated that the fall happened at her home.

In support of her claim form, appellant provided photographs of both her knees and ankle injuries and of the location where she alleged the incident occurred.

Appellant sought treatment on August 29, 2020 at an emergency room. Nursing notes indicate that she tripped on uneven ground and fell on her knees and also injured her right ankle.

In an August 30, 2020 notes, Dr. Natasha Babar, an internist, reported that appellant tripped on a stairwell outside of her home, fell from one step onto the gravel injuring her knees and right ankle. In notes of even date, Danielle Franco, a physician assistant, and Dr. Allison Leigh Schure, an internist, also noted that appellant fell at home and injured her knees. Dr. Geoffrey Phillips, a Board-certified orthopedic surgeon, in a note also dated August 30, 2020 related that appellant fell two days earlier from one stair onto gravel.

In a September 1, 2020 note, Dr. Jamie Heimroth, a resident physician, reported that appellant fell from one stair onto gravel. The employing establishment executed an authorization for examination and/or treatment (Form CA-16) of even date. The accompanying attending physician's report, Part B, of the Form CA-16 was incomplete.

In a report dated September 8, 2020, Dr. Steven M. Yager, a podiatrist, noted appellant's account of an August 29, 2020 employment incident where she tripped on broken concrete. He diagnosed right ankle sprain and possible tarsal tunnel syndrome.

On September 11, 2020 Dr. Tina Dulani, a physician Board-certified in emergency medicine, updated appellant's record to reflect that she fell on August 29, 2020 while using stairs outside of a home and fell onto her knees.

Dr. Siddhartha Sharma, a podiatrist, examined appellant on September 15 and 29, 2020. He related that appellant was involved in an accident while working as a clerk collecting census data on August 29, 2020. Appellant indicated that she was visiting a home and walking down a staircase, when she tripped and fell due to a broken stair, injuring her knees, right ankle, and back. Dr. Sharma diagnosed right ankle internal derangement and possible fracture.

In a September 18, 2020 report, Dr. Demetrios Mikelis, a physiatrist, recounted appellant's history of a work injury on August 29, 2020 while walking down a staircase and falling on broken concrete sidewalk. He diagnosed lumbar strain and bilateral lumbar radiculopathy.

On September 20, 2020 Dr. Mark Bursztyn, a Board-certified orthopedic surgeon, examined appellant due to bilateral knee pain. He noted that, while working on August 29, 2020, appellant twisted her ankle walking down a staircase and fell onto both knees.

In an October 6, 2020 development letter, OWCP advised appellant of the deficiencies of her claim. It advised her of the type of factual evidence needed to establish her claim and provided her with a questionnaire for her completion. OWCP afforded 30 days for a response.

In response, appellant provided a September 14, 2020 note in which Dr. Phillips recounted that she had fallen and injured her right foot and ankle at work on August 29, 2020. Dr. Phillips diagnosed right peroneal tendon injury.

On September 29, 2020 Dr. Sharma noted that appellant sustained a work injury on August 29, 2020 and again diagnosed right ankle internal derangement.

Appellant completed OWCP's development questionnaire on October 6, 2020 and asserted that she did not fall at her home, but at an assigned work address, while performing her job duties. She related that, while attempting to collect census data, she was walking down a staircase, stepped off the last stair which was broken, twisted her right ankle, and fell onto her knees and back. Following her fall, appellant returned to her car, drove approximately 14 minutes to her home, reported her injury to her supervisor, and was transported *via* ambulance from her home to the hospital emergency department.

In an October 1, 2020 letter and an October 6, 2020 e-mail, the employing establishment asserted that appellant was not working at 5:10 p.m. on August 29, 2020 as she finished her last assignment at 4:49 p.m. It provided the times of the three appointments completed by appellant on August 29, 2020, as 4:36 p.m., 4:41 p.m., and 4:49 p.m. The employing establishment noted that it had investigated and found that the incident address provided by appellant was a neighbor's home and not an assigned work location. It contended that she was not working at the time of the incident and that she was not in the performance of duty as the address she provided had never been assigned to her either on the date of the incident or part of her past case load. The employing establishment also provided the ambulance transportation report, which indicated that emergency services were contacted at 5:12 p.m., that appellant was transported from her home, and that initial evaluation found her sitting, awake, and oriented. Appellant reported to the emergency medical technicians that she fell on an uneven sidewalk and injured her left ankle and knee.

In an additional October 8, 2020 development letter, OWCP informed appellant that the employing establishment had controverted her claim and provided her with another questionnaire allowing 30 days for a response. Appellant completed the questionnaire on that date and asserted that there was no uneven pavement at her home. She noted that her hospital records were updated to reflect that she was not injured at her home, but at "'a home.'" Appellant indicated that she was injured at 4:49 or 4:50 p.m. and that it took her some time to arise after her fall. She recounted that at 5:10 p.m. on August 29, 2020 after driving from her work appointment she was sitting in

her car in front of her home when the ambulance arrived and transported her to the hospital. Appellant provided additional medical evidence.

By decision dated November 17, 2020, OWCP denied appellant's traumatic injury claim finding that she did not establish that the August 29, 2020 employment incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 17, 2020 appellant, through then-counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. He contended that appellant's fall occurred on August 29, 2020 at approximately 4:55 p.m. at an assigned work address while she was in the course of her employment. Counsel recounted that she fell while walking down a staircase with a large missing piece of concrete in the sidewalk flag adjacent to the bottom stair of the outdoor staircase. He resubmitted the photographs of record, and further contended that appellant had a cellular telephone application proving that she was present at the alleged incident location. The record contains an undated screen shot of the addresses of her home and where the alleged incident occurred. Appellant continued to provide medical evidence.

In a letter dated March 8, 2021, then-counsel requested discovery items prior to the oral hearing and provided additional photographs and documentation. In an affidavit dated March 8, 2021, appellant's sister, K.L., who was residing with her, reported that appellant had left home at approximately 4:00 p.m. on August 29, 2020 in order to conduct census visits. Appellant telephoned her shortly before 5:00 p.m. on that date and informed her that she had fallen and injured herself while in the performance of duty. She drove home, but was unable to get out of her car, until the emergency medical technicians arrived *via* ambulance to assist her. K.L. asserted that appellant did not fall at home on August 29, 2020, but fell while working as a census employee.

The oral hearing took place on March 10, 2021 and appellant testified regarding the events of August 29, 2020 noting that the cellular telephone provided by the employing establishment provided her with the addresses where she was to collect census data. After her lunch at her residence from 3:30 p.m. to 4:00 p.m., she went to two assignments, including the assignment at the address where she was injured. Following the oral hearing, appellant provided additional medical evidence.

On April 5, 2021 the employing establishment continued to controvert appellant's traumatic injury claim. It asserted that on August 29, 2020 she began working at 11:30 a.m. and took lunch from 3:30 p.m. through 4:00 p.m. The employing establishment reported that her last completed case was located on Lucas Street 2:51 p.m. It found that at 4:25 and 4:47 p.m. appellant was located at two addresses, other than the address where she claimed to have been injured, and thereafter, she returned to her residence. The employing establishment submitted an October 8, 2020 e-mail, which indicated that on August 29, 2020 appellant was assigned three cases on the street she alleged she was injured. She visited these addresses at 2:29 p.m., 2:33 p.m., and 2:53 p.m.

On April 9 2021 appellant, through then-counsel, submitted additional evidence. She provided a telephone call log with her supervisor on August 29, 2020 beginning at 5:19 p.m. and

text exchange with her supervisor beginning at 7:08 p.m. Appellant also submitted an affidavit dated April 8, 2021 asserting that she did not complete an employing establishment system entry for her final assignment where she was injured on August 29, 2020, because the alleged employment incident occurred before she reached the assigned apartments at that address and completed her tasks. She asserted that she visited one address, prior to returning to the street where she was injured. Appellant corrected her time of incident from 5:10 p.m. to 5:00 p.m., as she had telephoned her supervisor to report the alleged incident at 5:10 p.m.

By decision dated May 26, 2021, OWCP's hearing representative affirmed the November 17, 2020 decision, finding too many factual inconsistencies regarding whether the alleged employment incident occurred at the time and place, and in the manner alleged.

OWCP continued to receive additional medical evidence.

On May 13, 2022 appellant, through counsel, requested reconsideration. He alleged that he was providing an October 19, 2021 statement from appellant. Counsel contended that OWCP should compel the employing establishment to produce telephone records.

In a letter dated June 3, 2022, the employing establishment continued to controvert appellant's claim asserting that she was not in the performance of duty at the time of the alleged, August 29, 2020 incident.

By decision dated June 7, 2022, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 FECA, that the claim was timely filed within the applicable time limitation period 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 must first be determined whether a 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

[3] *Id*.

[4] *K.H.,* Docket No. 22-0370 (issued July 21, 2022); *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).

[5] *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).

[6] *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).

employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.[7]

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.[8] The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence that 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 *prima facie* case has been established.[9] 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.[10]

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on August 29, 2020, as alleged.

As noted, an employee's statement alleging that an injury occurred at a given time and place, and in a given manner, is of great probative value and will stand unless refuted by strong or persuasive evidence.[11] Appellant alleged that she sustained bilateral knee and ankle injuries on August 29, 2020 when she tripped and fell on a staircase landing on concrete at a home she was visiting while in the performance of duty. She provided a detailed account of the incident in her August 31, 2020 Form CA-1 and in her October 6 and 8, 2020 statements. Appellant also explained that she notified her supervisor of the injury the same day, and provided emergency department treatment notes beginning August 29 2020. The initial August 29, 2020 nursing notes indicate that she tripped and fell.

Appellant also provided a March 8, 2021 affidavit from her sister, corroborating that she was not at home when her injuries occurred on August 29, 2020 and that she was unable to exit her vehicle after arriving at home due to these injuries.[12] While the employing establishment has

[7] *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).

[8] *K.H., supra* note 4; *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

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

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

[11] *C.B.*, Docket No. 21-0554 (issued June 21, 2022); *A.W.*, Docket No. 21-0686 (issued April 5, 2022); *N.A.*, Docket No. 21-0773 (issued December 28, 2021); *L.Y.*, Docket No. 21-0221 (issued June 30, 2021); *see M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

[12] *See D.F.*, Docket No. 21-0825 (issued February 17, 2022).

controverted her claim, it has provided inconsistent evidence regarding the locations and times assigned to appellant, and in the April 5, 2021 letter ultimately corroborated the locations she was assigned on August 29, 2020 included Benton and Lucas Street. Appellant has explained that she did not enter her final stop at approximately 5:00 p.m. as she fell before reaching the assigned apartments and returned to her residence after a short drive in time to request an ambulance at 5:12 p.m. The injuries appellant claimed and documented *via* photographs and initial medical treatment are consistent with the facts and circumstances she set forth, her course of action, and the medical evidence she submitted. Appellant has explained any apparent inconsistencies in the history of injury in her medical evidence and requested correction from her initial treating physicians to indicate that she was injured at "a home," not at her home. She has provided photographs of the location were the incident occurred and statements from her family to corroborate where and how it occurred.

As appellant has established that the August 29, 2020 employment incident occurred as alleged, the question becomes whether the incident caused an injury.[13] As OWCP found that appellant had not established fact of injury, it has not evaluated the medical evidence. The Board will, therefore, set aside OWCP's June 7, 2022 decision and remand the case for consideration of the medical evidence of record.[14] After this and other 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 August 29, 2020 employment incident.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on August 29, 2020, 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 August 29, 2020 employment incident.[15]

[13] *C.B., A.W. and N.A., supra* note 11; *see M.H.*, Docket No, 20-0576 (issued August 6, 2020); *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

[14] *C.B., A.W. and N.A., id.*; *M.H., id.*, *S.M.*, Docket No. 16-0875 (issued December 12, 2017).

[15] A completed authorization for examination and/or treatment (Form CA-16) may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.D.*, Docket No. 22-0286 (issued June 15, 2022); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the June 7, 2022 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part. The case is remanded to OWCP 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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board