

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

C.N., Appellant)	
)	
and)	Docket No. 23-0328
)	Issued: August 10, 2023
U.S. POSTAL SERVICE, KRAKOW POST)	
OFFICE, Krakow, WI, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 3, 2023 appellant filed a timely appeal from a November 7, 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 that she sustained a traumatic injury in the performance of duty on August 5, 2022, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the November 7, 2022 decision and on appeal, OWCP received additional evidence. 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 October 4, 2022 appellant, then a 64-year-old lead sales and services associate, filed a traumatic injury claim (Form CA-1) alleging that on August 5, 2022 she injured her right knee when she was going to grab a garbage can and tripped on the corner of the platform, fell on her right knee, and smashed her face into the carriers' case, while in the performance of duty. She noted there was "[n]ot enough room between [the] case and carts, and [the] platform is a tripping hazard." On the reverse side of the form, the employing establishment indicated that the employee was injured in the performance of duty.

In an October 4, 2022 statement, the employing establishment controverted the claim. M.R., an occupational health claims specialist, noted that no medical evidence was received with the claim, appellant "is currently off work for nonwork-related surgery," and the claim was not filed timely, as the date of injury was August 5, 2022, and her form was signed on September 24, 2022. It explained that appellant alleged that the incident occurred while she was grabbing garbage cans to empty, but this was to be done after all the carriers left for their routes, for safety reasons. The employing establishment also noted that while she alleged that no carrier was on the platform at the time of the incident, other employees stated that the carrier was on the platform inside the case, sorting mail when appellant came to grab the garbage can. It noted that when management asked if appellant wanted to see a doctor, she responded that "[s]he will see but not at this time."

In a development letter dated October 5, 2022, OWCP informed appellant of the deficiencies of 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 respond. It also requested additional information from the employing establishment.

OWCP received a September 28, 2022 x-ray of appellant's right knee, read by Dr. George Zaleski, a Board-certified diagnostic radiologist, which revealed minimal degenerative changes of the right knee, small joint effusion, intact patella, and no fracture or healing fractures identified.

By decision dated November 7, 2022, OWCP denied appellant's traumatic injury claim, finding that the factual evidence of record was insufficient to establish that an employment incident occurred on August 5, 2022, 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 FECA³ 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

³ *Supra* note 1.

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 fact of injury has been established.⁷ Fact of injury consists of two components that must be considered in conjunction with one another. 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.⁸ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁹

An employee's statement 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 Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. 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. 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 doubt on an employee's statement in determining whether a *prima facie* case has been established.¹¹

⁴ See *C.M.*, Docket No. 22-0456 (issued August 10, 2022); *T.G.*, Docket No. 20-1549 (issued August 3, 2021); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *T.G.*, *id.*; *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 *T.G.*, *id.*; *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *S.G.*, Docket No. 21-1039 (issued February 22, 2022); *T.G.*, *id.*; *T.A.*, Docket No. 20-1284 (issued January 27, 2021); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁸ *S.G.*, *id.*; *M.F.*, Docket No. 19-0578 (issued January 26, 2021); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *G.E.*, Docket No. 20-1081 (issued January 26, 2021); *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *C.R.*, Docket No. 20-1147 (issued January 5, 2021); *M.S.*, Docket No. 18-0059 (issued June 12, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹¹ *S.G.*, *supra* note 7; *K.F.*, Docket No. 18-0485 (issued February 18, 2020); *D.R.*, Docket No. 19-0072 (issued June 24, 2019).

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 August 5, 2022, as alleged.

On her Form CA-1 appellant indicated that on August 5, 2022 she was going to grab a garbage can, tripped on the corner of the platform, fell on her right knee, and smashed her face into the carriers' case. She noted that there was not enough room between the case and the platform, which was a tripping hazard.

On the reverse side of the claim form, the employing establishment acknowledged that appellant was in the performance of duty when the incident occurred. Although it subsequently controverted the claim contending that appellant did not file her Form CA-1 claim immediately, it has not provided any strong or persuasive evidence to refute the occurrence of the August 5, 2022 employment incident. The employing establishment in fact noted that other employees had related that when appellant came to grab the garbage can, a carrier was on the platform inside the case. This further evidence is not inconsistent with appellant's allegations that the incident occurred as she attempted to grab a garbage can on the platform. As noted, an employee's statement alleging that an incident 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.¹²

Since there are no inconsistencies in the evidence that cast serious doubt upon the validity of the claim, the Board finds that appellant has established a traumatic incident in the performance of duty on August 5, 2022, as alleged.

As appellant has established that an incident occurred in the performance of duty on August 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 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 5, 2022 employment incident, and any attendant disability.

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 August 5, 2022, as alleged.

¹² *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *see also M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹³ *D.F., id.; M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

¹⁴ *D.F., id.; L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2022 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 10, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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