

FACTUAL HISTORY

On March 16, 2021 appellant, then a 45-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that, on February 23, 2021 at 10:30 a.m., she sustained a right knee injury when she slipped and fell while delivering mail on Huntington Road, in the performance of duty.³ She did not stop work. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty.

In a letter dated March 24, 2021, the employing establishment controverted appellant's claim, contending that she did not deliver mail to the indicated address and that there was no medical evidence linked to the specific event allegedly causing injury. Further, it contended that she filed two claims for the same injury due to the previous denial of continuation of pay (COP).

In a development letter dated April 19, 2021, OWCP informed appellant of the deficiencies in her claim and advised her of the factual and medical evidence needed. It provided her with a questionnaire for her completion and afforded her 30 days to respond.

OWCP thereafter received additional medical evidence. On March 4, 2021 appellant was seen by Dr. Gary R. Richo, a Board-certified orthopedic surgeon. Dr. Richo reported that she related a severe twisting injury to the right knee "about a month ago" after walking down and missing a step while delivering mail. Appellant also indicated that she was seen in an emergency room and underwent x-rays. She further indicated that her knee buckled occasionally. Dr. Richo reviewed the x-ray report, which showed mild degenerative changes of the right knee. He assessed a right knee sprain and administered a corticosteroid injection in appellant's right knee. A work status note, of even date, and signed by Dr. Richo placed appellant off work pending a magnetic resonance imaging (MRI) scan. A duty status report (Form CA-17) of even date from him indicated a diagnosis of right knee sprain and right knee pain and placed appellant off work.

In a letter dated April 27, 2021, the employing establishment controverted appellant's claim again, contending that she filed two claims for the same injury "and different dates of injury" due to a previous denial of COP. It further contended that she had submitted the same medical evidence in the prior claim.

By decision dated June 8, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence was insufficient to establish that the February 23, 2021 employment incident occurred, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant thereafter submitted a narrative statement dated March 11, 2021, indicating that she slipped and fell at the alleged address and was helped by a resident on that street.

³ OWCP assigned the present claim OWCP File No. xxxxxx539. Appellant had previously filed a claim alleging that on January 28, 2021 she injured her right knee and leg, when she stumbled while descending stairs while in the performance of duty. OWCP assigned this claim OWCP File No. xxxxxx142 and denied the claim by decision dated April 19, 2021. The claims have not been administratively combined by OWCP.

On July 30, 2021 appellant was seen by Dr. Richo for a follow-up appointment. She related continued knee pain, clicking in her knee, and weakness and instability. Dr. Richo again assessed right knee sprain.

On February 7, 2022 appellant requested reconsideration. In support of her request, she submitted an amended version of the medical note from the March 4, 2021 visit with Dr. Richo dated August 5, 2022. The amended note indicated that appellant related a second fall on her right knee on March 2, 2021 due to her knee buckling.

In a letter dated April 12, 2022, the employing establishment controverted appellant's claim once again, reiterating that she had filed two claims for the same injury due to a previous denial of COP. It also reiterated that the medical note dated March 4, 2021 was submitted with the previous claim and that she did not deliver mail to Huntington Road on February 23, 2021.

An MRI scan report of the knee dated July 28, 2022 and signed by Dr. S. Harpreet Baweja, a Board-certified diagnostic radiologist, found: (1) degeneration in the body and posterior horn body junction of the medial meniscus without definite tear; (2) superior surface degenerative fraying tear of the anterior root of the lateral meniscus; (3) mild sprain medial collateral ligament; (4) mild patellofemoral arthritis; and (5) small effusion, small Baker's cyst.

Appellant submitted a narrative statement dated August 3, 2022 in response to the employing establishment's challenge. She indicated that she was initially injured on January 28, 2021 when she slipped and fell, was treated in an emergency room on February 2, 2021 and reported the injury to her supervisor on February 3, 2021. Appellant was out of work until February 22, 2021. She further indicated that the actual date of her second injury was March 2, 2021, which was the date her knee buckled and caused her to fall while delivering mail. Appellant noted that she saw her physician on March 4, 2021 and he explained that her knee buckling had caused her to fall on March 2, 2021. She also submitted a clock rings report which indicated that she had worked on March 2, 2021.

Appellant submitted a narrative statement on August 24, 2022 indicating that she mistakenly claimed February 23, 2021 as the date of injury. She alleged that the date of injury was, instead, March 2, 2021. Appellant also submitted an August 19, 2022 note from A.L., who noted that she was an OWCP representative for the local union branch. This note indicated that appellant had contacted her on March 3, 2021 and informed her of the incident and injury sustained on March 2, 2021. Appellant also submitted a witness statement dated August 23, 2022 from S.S., indicating that appellant contacted her on March 2, 2021 to inform her that appellant fell and injured her knee on Huntington Road.

By decision dated October 26, 2022, OWCP denied modification of its June 8, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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

⁴ *Supra* note 2.

States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA, 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 an employee sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established by medical evidence.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 in 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.⁹ 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.¹⁰ 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

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on March 2, 2021, as alleged.

⁵ *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 *B.H.*, Docket No. 20-0777 (issued October 21, 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 *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

⁸ *J.B.*, Docket No. 22-1201 (issued April 26, 2023); see *J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

⁹ *J.B.*, *id.*; *S.A.*, Docket No. 19-0613 (issued August 22, 2019); *Betty J. Smith*, 54 ECAB 174 (2002).

¹⁰ *J.B.*, *id.*; *L.D.*, Docket No. 16-0199 (issued March 8, 2016), *Betty J. Smith*, *id.*

¹¹ *J.B.*, *id.*; see *M.V.*, Docket No. 19-1040 (issued August 12, 2022); *J.B.*, Docket No. 19-1487 (issued January 14, 2020); *M.S.*, Docket No. 22-0106 (issued August 9, 2022); *W.C.*, Docket No. 18-1651 (issued March 7, 2019); *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

Appellant has alleged and filed two traumatic injury claims for separate incidents occurring in January and March 2021. In a statement dated August 3, 2022, she explained that she was initially injured on January 28, 2021 when she slipped and fell, was treated in an emergency room on February 2, 2021 and reported the injury to her supervisor on February 3, 2021. Appellant also alleged that she sustained a second injury on March 2, 2021 when her knee buckled and she fell while delivering mail. She sought medical treatment on March 4, 2021. Appellant explained that she had mistakenly indicated that her second injury occurred on February 23, 2021 but she explained and alleged her actual date of injury was March 2, 2021. She submitted a witness statement from A.L., explaining that appellant had contacted her on March 3, 2021 and informed her of the incident and injury appellant sustained on March 2, 2021. Appellant further submitted a witness statement dated August 23, 2022 from S.S. indicating that appellant contacted her on March 2, 2021 to inform her that she fell and injured her knee on Huntington Road. OWCP also received an amended note from Dr. Richo dated August 5, 2022, which indicated that appellant had related a second fall on her right knee on March 2, 2021 due to her knee buckling. The primary basis for the employing establishment's challenge was that appellant did not deliver mail to the indicated address on February 23 2021 and that there was no medical evidence linked to the specific event allegedly causing injury. It further contended that she filed two claims for the same injury on two different dates due to a previous denial of COP. As noted, an employee's statement alleging that an injury occurred at a given time, place, and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹² The Board finds that appellant has established a traumatic incident in the performance of duty on March 2, 2021, as alleged.

As appellant has established that the March 2, 2021 employment incident occurred as alleged, the question becomes whether the employment incident caused an injury.¹³ Therefore, the case shall be remanded to OWCP to determine whether she sustained an injury causally related to the March 2, 2021 employment incident.¹⁴ On remand, OWCP shall also consider whether a full and fair adjudication of the issues would require that it administratively combine the current case record with appellant's prior right knee claim, as noted above.¹⁵ Following this and other such further development as deemed necessary, it shall issue a *de novo* decision on her traumatic injury claim.

¹² *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *see also M.C., id.; D.B., id.*

¹³ *F.S.*, Docket No. 21-1040 (issued March 10, 2023); *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

¹⁴ *F.S., id.; I.J.*, Docket No. 20-0599 (issued November 22, 2022); *T.M.*, Docket No. 20-0712 (issued November 10, 2020); *see also T.A.*, Docket No. 19-1525 (issued March 4, 2020).

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c(1) (February 2000); *F.S., id.; T.H.*, Docket No. 22-0658 (issued September 1, 2022); *W.W.*, Docket No. 19-0884 (issued June 16, 2020); *L.P.*, Docket Nos. 18-1558 and 18-1568 (issued June 21, 2019); *L.S.*, Docket Nos. 17-1863, 17-1867, and 17-1868 (issued April 18, 2018); *W.S.*, Docket No. 15-0969 (issued October 5, 2015); *C.C.*, Docket No. 14-1576 (issued March 9, 2015).

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on March 2, 2021, as alleged. The Board further finds, however, that the case is not in posture for decision as to whether she sustained an injury causally related to the accepted March 2, 2021 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 26, 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 18, 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