

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

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| L.W., Appellant |) | |
| |) | |
| and |) | Docket No. 24-0197 |
| |) | Issued: April 11, 2024 |
| DEPARTMENT OF DEFENSE, TINKER AIR |) | |
| FORCE BASE, Oklahoma City, OK, Employer |) | |
| |) | |

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 December 19, 2023 appellant filed a timely appeal from a November 29, 2023 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 a traumatic incident occurred on August 2, 2023 in the performance of duty, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. 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.

FACTUAL HISTORY

On August 10, 2023 appellant, then a 48-year-old sheet metal mechanic, filed a traumatic injury claim (Form CA-1) alleging that on August 2, 2023 an unknown substance or allergies injured her eyes while in the performance of duty. On the reverse side of the claim form, appellant's supervisor contended that she was not injured in the performance of duty. Appellant stopped work on August 2, 2023 and returned to work on August 15, 2023.

In a letter dated August 21, 2023, the employing establishment controverted appellant's claim.

In a development letter dated September 19, 2023, 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 60 days to respond.

Appellant subsequently submitted illegible documents from an immediate care visit on October 4, 2023.

In a follow-up development letter dated November 14, 2023, OWCP informed appellant that the evidence of record remained insufficient to support her claim. It notified her that the documents received on October 4, 2023 were illegible. OWCP reminded appellant that she had been afforded 60 days from September 19, 2023 to submit additional factual and medical evidence in support of her claim. No response was received.

By decision dated November 29, 2023, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the events occurred on August 2, 2023 in the performance of duty, 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 FECA 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

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. A fact of injury determination is based on two elements. First, the employee must submit sufficient

³ *A.F.*, Docket No. 18-1154 (issued January 17, 2019); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *A.F.*, *id.*; *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged.⁵ Second, the employee must submit sufficient medical evidence to establish that the employment incident caused an injury.⁶

An injury does not have to be confirmed by eyewitnesses to establish 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 It is well established that a claimant cannot establish fact of injury if there are inconsistencies in the evidence that cast serious doubt as to whether the specific event or incident occurred at the time, place, and in the manner alleged.⁸ 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 However, 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 not met her burden of proof to establish a traumatic incident in the performance of duty on August 2, 2023, as alleged.

Appellant filed her traumatic injury claim on August 15, 2023 wherein she alleged injury to her left eye while in the performance of duty. She noted that the claimed condition had spread to her right eye and explained that she had been off work due to allergies or an unknown substance blown into her eyes. In response to OWCP's September 19, 2023 development letter, appellant submitted illegible documents from an immediate care visit on October 4, 2023. Subsequently, on November 14, 2023, OWCP advised that the evidence previously submitted was illegible, however, no further response was received.

The Board finds that appellant's description of the traumatic injury is imprecise and vague and fails to establish that a traumatic incident occurred in the performance of duty, as alleged.¹¹ Appellant provided no additional details or information sufficient to determine the circumstances surrounding her claimed injury on August 2, 2023.¹² The Board has found that a vague recitation

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Charles B. Ward*, 38 ECAB 667-71 (1987).

⁸ *Gene A. McCracken*, 46 ECAB 593 (1995); *Mary Joan Coppolino*, 43 ECAB 988 (1992).

⁹ *Robert A. Gregory*, 40 ECAB 478, 483 (1989).

¹⁰ *D.B.*, 58 ECAB 464, 466-67 (2007).

¹¹ *See C.M.*, Docket No. 22-0509 (issued September 28, 2022); *M.E.*, Docket No. 21-1328 (issued April 18, 2022).

¹² *See L.E.*, Docket No. 21-0847 (issued February 16, 2022); *see also L.M.*, Docket No. 21-0109 (issued May 19, 2021).

of the facts does not support an her allegation that a specific incident occurred, which caused a work-related injury.¹³

Appellant has not provided a sufficient description of the alleged employment incident and the mechanism by which she sustained an injury. The Board, therefore, finds that she has not met her burden of proof.¹⁴

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a traumatic incident in the performance of duty on August 2, 2023, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the November 29, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 11, 2024
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

¹³ *L.M.*, Docket No. 20-1592 (issued May 3, 2021); *R.P.*, Docket No. 19-1233 (issued November 19, 2019); *see also K.S.*, Docket No. 17-2001 (issued March 9, 2018).

¹⁴ *J.D.*, Docket No. 22-0286 (issued June 15, 2022); *H.D.*, Docket No. 15-1698 (issued May 4, 2016).