

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

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<b>B.F., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 24-0250</b>
	)	<b>Issued: April 25, 2024</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>DALLAS VA MEDICAL CENTER, Dallas, TX,</b>	)	
<b>Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*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 January 12, 2024 appellant filed a timely appeal from an October 2, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the October 2, 2023 decision, a appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on June 6, 2023, as alleged.

## FACTUAL HISTORY

On June 13, 2023 appellant, then a 53-year-old foodservice worker, filed a traumatic injury claim (Form CA-1) alleging that on June 6, 2023 at 4:30 p.m. she sprained her left knee and leg when docking a truck in a docking station while in the performance of duty. She stopped work on June 6, 2023, and returned to work on June 13, 2023. Appellant notified the employing establishment of her injury on June 13, 2023. On the reverse side of the claim form, T.S., appellant's supervisor, checked a box marked "Yes" to indicate her belief that appellant was in the performance of duty; however, she noted that her knowledge of the facts about the injury did not agree with appellant's statement. She indicated that appellant stated that she was injured at 4:30 p.m. on June 6, 2023; however, appellant was on sick leave from 2:00 p.m. to 5:00 p.m. on that day. The employing establishment controverted the claim due to conflicting statements surrounding the claimed June 6, 2023 employment incident.

On June 6, 2023 Dr. Ruby Anthony-White, a Board-certified internist and employing establishment physician, prepared a report of appellant's emergency treatment for a work-related injury. She returned appellant to work with restrictions. An x-ray of the left knee dated June 6, 2023 revealed mild tricompartmental arthropathy, small knee joint effusion, soft tissue prominence, and swelling in the anterior knee.

In a June 26, 2023 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond.

OWCP received additional evidence. The employing establishment submitted a leave used summary for appellant from December 18, 2022 through July 15, 2023 noting that on June 6, 2023 from 8:30 a.m. to 9:30 a.m. and from 2:00 p.m. to 5:00p.m. appellant was absent without leave (AWOL).

An x-ray of the left knee dated June 26, 2023 revealed no acute fracture or dislocation, minimal degenerative changes of the medial femorotibial compartment, and small joint effusion.

On June 29, 2023 the employing establishment offered appellant a modified position as a food service worker, effective June 30, 2023. Appellant did not respond to the job offer.

In a letter dated July 5, 2023, the employing establishment challenged the claim asserting that appellant did not provide a rationalized medical opinion establishing that she sustained a work-related injury on June 6, 2023. It noted that she had a preexisting history of osteoarthritis and arthropathy of the left knee. The employing establishment indicated that appellant was offered a limited-duty job within the restrictions provided by the employing establishment physician, however, she did not respond and has not returned to work.

On July 6, 2023 Dr. Robert Hein, a specialist in pain medicine, treated appellant for a left knee injury. Appellant reported that on June 6, 2023, while employed as a cook, she was docking a truck and twisted her left knee. She indicated that after the injury her supervisor sent her to the employing establishment health center where x-rays were taken. Dr. Hein diagnosed acute pain of the left knee, internal derangement of the left knee, and sprain of the left knee. He noted that in review of the mechanism of injury, medical records, diagnostic imaging, and objective examination findings that there was a causal relationship between appellant's injury and resulting symptomology, which occurred during her customary job duties. Dr. Hein advised that at that time she was off work. In a work capacity evaluation (Form OWCP-5c) of even date he noted that appellant was unable to perform her usual job without restriction for 30 days.

In a July 24, 2023 development letter, OWCP informed appellant of the deficiencies of her claim. It provided her leave used summary for the period of December 18, 2022 through July 15, 2023, which revealed that on June 6, 2023 she was AWOL from 8:30 a.m. to 9:30 a.m. and from 2:00 p.m. to 5:00 p.m. OWCP advised appellant that this information contradicted the Form CA-1 she submitted, which stated that her injury occurred at 4:30 p.m. It requested that she address the discrepancies between the leave used report and the Form CA-1. OWCP afforded appellant 60 days to respond.

OWCP received additional evidence. A WebTA timesheet for the period June 4 through 17, 2023, revealed that on June 6, 2023 appellant was AWOL from 2:00 p.m. to 5:00 p.m.

A magnetic resonance imaging (MRI) scan of the left knee dated August 10, 2023 revealed a horizontal tear in the anterior horn of the lateral meniscus, acute partial-thickness tear in the medial collateral ligament, moderate sized left knee joint effusion, small complex synovial cyst, small Baker's cyst, and grade 4 patellofemoral chondromalacia.

In reports dated August 15 and September 12, 2023, Dr. Hein treated appellant in follow-up for a left knee injury. He discussed the findings of the August 10, 2023 MRI scan of the left knee. Dr. Hein diagnosed acute pain of the left knee, internal derangement of the left knee, sprain of the left knee, acute lateral meniscus tear of the left knee, traumatic rupture of the medial collateral ligament of the left knee, and chondromalacia of the left patella. He opined that there was a causal relationship between appellant's injury and resulting symptomology, which occurred while performing her customary job duties. In a Form OWCP-5c of the same date, Dr. Hein diagnosed left knee pain, internal derangement of the knee, unspecified, and sprain of unspecified site of the left knee and advised that appellant could not work. In a duty status report (Form CA-17) dated September 12, 2023, he noted diagnoses and returned appellant to work with restrictions.

On August 17, 2023 Dr. Khawaja Ikram, an osteopath Board-certified in orthopedic surgery, treated appellant for left knee pain. Appellant reported that on June 6, 2023 while employed as a cook she was docking a truck and twisted her left knee. Dr. Ikram diagnosed acute pain of the left knee, internal derangement of the left knee, sprain of the left knee, acute lateral meniscus tear of the left knee, traumatic rupture of the medial collateral ligament of the left knee, and chondromalacia of the left patella. He noted that "[i]n review of the mechanism of injury, medical records, diagnostic imaging, and objective examination findings" there was a causal relationship between appellant's injury and resulting symptomology, which occurred during her

customary job duties. In a Form CA-17 of even date, Dr. Ikram noted diagnoses and returned her to work with restrictions.

OWCP received e-mails dated August 17 and 18, 2023 from T.S., appellant's supervisor, who reported that on the date of injury there were no witnesses to the injury and no cameras in the area. She indicated that the employing establishment had a maintenance contract and the trucks and docks were serviced regularly. T.S. noted that on June 6, 2023 appellant arrived to work late and worked for four hours and then departed. She noted that appellant was off work on June 7 and 8, 2023 and had since failed to return to duty. Appellant's timecard reflected that she was AWOL from 2:00 p.m. to 5:00 p.m. T.S. advised that on June 6, 2023 appellant requested sick leave, but did not have any leave remaining and was placed in AWOL status. She indicated that the sick leave request did not mention that it was due to an injury and appellant did not report that an injury occurred that day.

On August 18 and 25, 2023 the employing establishment challenged the claim asserting that there were factual inconsistencies with regard to the time and place, and manner of the injury described by appellant. It noted that her report of the incident contradicted the timecard for that day. The timecard shows that appellant was AWOL at the time of injury. Additionally, there were no witnesses to the injury and lack of confirmation of the injury. The record revealed that appellant left work at 2:00 p.m. and did not report that she was injured and failed to report for work after the alleged June 6, 2023 incident.

By decision dated October 2, 2023, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the June 6, 2023 employment incident occurred as alleged. It found that the evidence established that she was on leave without pay (LWOP) at the time of the alleged injury. OWCP 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<sup>3</sup> 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 limitation of FECA,<sup>4</sup> 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

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *E.K.*, Docket No. 22-1130 (issued December 30, 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).

employment injury.<sup>5</sup> 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.<sup>6</sup>

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. 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. Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.<sup>7</sup>

To establish that, an injury occurred as alleged, the injury does not have to 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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on June 6, 2023, as alleged.

In her June 13, 2023 Form CA-1, appellant indicated that on June 6, 2023 at 4:30 p.m. she sprained her left knee and leg when docking a truck into a docking station. However, the evidence of record supports that she was AWOL from 2:00 p.m. to 5:00 p.m. on the date of injury. This inconsistency as to the time of the injury casts serious doubt as to whether the alleged employment incident occurred at the time and place, and in the manner alleged.<sup>11</sup>

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<sup>5</sup> *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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).

<sup>6</sup> *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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).

<sup>7</sup> *H.M.*, Docket No. 22-0343 (issued June 28, 2022); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667-71 (1987).

<sup>9</sup> *K.H.*, Docket No. 22-0370 (issued July 21, 2022); *Betty J. Smith*, 54 ECAB 174 (2002); *see also L.D.*, Docket No. 16-0199 (issued March 8, 2016).

<sup>10</sup> *See K.H., id.*; *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

<sup>11</sup> *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

The record contains a leave used summary for appellant from December 18, 2022 through July 15, 2023 noting that on June 6, 2023 from 8:30 a.m. to 9:30 a.m. and from 2:00 p.m. to 5:00 p.m. she was AWOL. Additionally, a WebTA timesheet for the period June 4 through 17, 2023 noted that on June 6, 2023 her pay status was AWOL from 2:00 p.m. to 5:00 p.m. This evidence is in direct conflict with the time of injury appellant provided on the Form CA-1 of 4:30 p.m. and provides a conflicting account as to when the injury occurred and whether she was on leave during the incident.

E-mails dated August 17 and 18, 2023 from T.S., appellant's supervisor, revealed that on June 6, 2023 appellant arrived to work late and worked for four hours and then departed. T.S. noted that appellant's timecard reflected that she was AWOL from 2:00 p.m. to 5:00 p.m. She noted that appellant requested sick leave, but she did not have sick leave available and was placed on AWOL. T.S. indicated that the sick leave request did not mention that it was due to an injury and appellant did not mention an injury occurred that day. Given these conflicting accounts regarding the time of appellant's left knee injury, the evidence of record fails to establish that the employment incident occurred in the manner alleged.<sup>12</sup>

Appellant has failed to present a clear factual statement in the record describing the specific alleged employment-related incident alleged to have caused or contributed to her claimed medical condition.<sup>13</sup> Her conflicting account as to the time of the work incident is not consistent with the Form CA-1 she filed for the claim.<sup>14</sup>

Additionally, in its June 26 and July 24, 2023 development letters, OWCP advised appellant of the factual information needed to establish her claim and attached a questionnaire regarding the circumstances surrounding the alleged traumatic injury for her completion. However, appellant did not complete and return the questionnaire. As she failed to provide responses to the questions posed, she did not sufficiently explain circumstances surrounding her alleged injury.<sup>15</sup>

As the evidence of record is insufficient to establish a traumatic injury in the performance of duty on June 6, 2023 as alleged, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument, together 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.

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<sup>12</sup> See *B.S.*, Docket No. 21-1414 (issued November 23, 2022).

<sup>13</sup> See *B.M.*, Docket No. 21-1185 (issued March 4, 2022); *D.C.*, Docket No. 18-0082 (issued July 12, 2018).

<sup>14</sup> *L.T.*, Docket No. 20-0345 (issued June 21, 2022); *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).

<sup>15</sup> *R.B.*, Docket No. 19-1026 (issued January 14, 2020); *M.S.*, Docket No. 18-0059 (issued June 12, 2019); *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on June 6, 2023 as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 2, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 25, 2024  
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