

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

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S.N., Appellant	)	
	)	
and	)	<b>Docket No. 25-0039</b>
	)	<b>Issued: December 12, 2024</b>
<b>DEPARTMENT OF THE INTERIOR, FORT</b>	)	
<b>APACHE BUREAU OF INDIAN AFFAIRS,</b>	)	
<b>White River, AZ, Employer</b>	)	

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*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 October 16, 2024 appellant filed a timely appeal from an October 4, 2024 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 over 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 4, 2024 decision, 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 that a traumatic injury occurred in the performance of duty on July 22, 2024, as alleged.

## FACTUAL HISTORY

On July 23, 2024 appellant, then a 59-year-old forestry technician, filed a traumatic injury claim (Form CA-1) alleging that on July 22, 2024 she sustained a lower back injury when she was walking on slippery wet ground, pine needles, and leaves and slipped forward while in the performance of duty. She stopped work on July 23, 2024.

OWCP received an attending physician's report, Part B of the Form CA-16, dated July 22, 2024, containing an illegible signature from a physician assistant who noted appellant's slip and fall injury at work, and diagnosed low back and left hip pain.

In a report of termination of disability and payment (Form CA-3) dated July 31, 2024, the employing establishment informed OWCP that appellant had returned to work on July 31, 2024.

In a development letter dated August 8, 2024, 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.

In a follow-up letter dated August 29, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the August 8, 2024 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record. No response was received.

By decision dated October 4, 2024, OWCP denied appellant's traumatic injury claim, finding that she had not submitted evidence to establish that the July 22, 2024 employment incident occurred as alleged. Therefore, it found 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 a personal injury.<sup>7</sup>

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.<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 occurred in the performance of duty on July 22, 2024, as alleged.

In her Form CA-1, appellant alleged that on July 22, 2024 she sustained a lower back injury when she slipped forward when walking while in the performance of duty.

OWCP, in its August 8, 2024 development letter, notified appellant of the type of evidence needed to establish her traumatic injury claim. It requested that she complete an attached questionnaire and provide a detailed factual description of the alleged employment incident along with medical evidence in the form of a physician's opinion relative to causation. In a follow-up development letter dated August 29, 2024, OWCP advised appellant that it had conducted an

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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, 67-71 (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).

interim review, and the factual evidence remained insufficient to establish her claim. It noted that she had 60 days from the August 8, 2024 letter to submit the requested supporting evidence. However, no response was received.<sup>11</sup>

An employee's statement as to how the injury occurred is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>12</sup> However, in this instance, appellant provided only a general statement, but did not provide a statement as to how the injury specifically occurred. As noted, she bears the burden of submitting a factual statement describing the alleged traumatic incident.<sup>13</sup> Despite OWCP's request for clarification of the factual circumstances of her claim, appellant failed to respond.<sup>14</sup>

Appellant also submitted a July 22, 2024 attending physician's report in support of her claim from a medical provider with an illegible signature. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence because the author cannot be identified as a physician.<sup>15</sup>

Accordingly, the Board finds that appellant has not established an injury in the performance of duty.<sup>16</sup>

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.

### CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that a traumatic injury occurred in the performance of duty on July 22, 2024, as alleged.

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<sup>11</sup> See *J.D.*, Docket No. 22-0286 (issued June 15, 2022); *M.F.*, *supra* note 8.

<sup>12</sup> *C.C.*, Docket No. 10-2054 (issued July 8, 2011).

<sup>13</sup> *D.C.*, Docket No. 18-0314 (issued September 24, 2019); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

<sup>14</sup> See *C.B.*, Docket No. 24-0301 (issued May 6, 2024).

<sup>15</sup> See *D.F.*, Docket No. 22-0904 (issued October 31, 2022); see also *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

<sup>16</sup> *J.A.*, Docket No. 24-0919 (issued October 25, 2024).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 4, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 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