United States Department of Labor
Employees' Compensation Appeals Board

J.A., Appellant	)	
and	)	**Docket No. 24-0919**
	)	**Issued: October 25, 2024**
U.S. POSTAL SERVICE, POST OFFICE, Cincinnati, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On September 13, 2024 appellant filed a timely appeal from an August 27, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 a traumatic injury in the performance of duty on May 3, 2024, as alleged.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the August 27, 2024 decision, OWCP received additional evidence. 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 May 6, 2024 appellant, then a 37-year-old postal collection and delivery employee, filed a traumatic injury claim (Form CA-1) alleging that on May 3, 2024 she sustained a left ankle injury when she rolled her ankle as she stepped on grass while in the performance of duty. She stopped work on the date of injury.

In an attending physician's report (Form CA-20) dated May 4, 2024, Sun Min Luong, a physician assistant, noted that on May 3, 2024 appellant "stepped off a step on uneven ground" and "rolled left ankle." She diagnosed avulsion fracture to left distal fibula, and checked a box marked "Yes" to indicate that the condition was caused or aggravated by an employment activity. In a first report of injury form and duty status report (Form CA-17) of even date, Ms. Luong noted that appellant related a history of a left ankle injury on May 3, 2024 when she rolled her ankle as she stepped on grass, and she was diagnosed with left distal fibula avulsion fracture. She released appellant to return to work with restrictions of no more than five minutes of walking per hour, effective May 6, 2024, and recommended that she wear a walking boot for one week.

In a May 17, 2024 medical report, Dr. Elizabeth Ann Patterson, an osteopathic family medicine physician, noted that appellant related a history of "carrying packages and the packages fell and landed on my ankle" and that "she was carrying packages, packages shifted causing her to be off balance and she rolled her left ankle." She performed a physical examination of the left ankle, and noted tenderness to palpation of the anterior talofibular ligament (ATFL), the posterior talofibular ligament (PTL), and the calcaneofibular ligament (CFL), but no swelling, ecchymosis, or abrasions. Range of motion and strength testing were not performed. Dr. Patterson diagnosed other fracture of upper and lower end of left fibula and opined that the condition was caused or aggravated by "carrying packages and the packages fell and landed on ankle." She released appellant to return to sedentary work and recommended an evaluation by a podiatrist.

In a follow-up note dated May 31, 2024, Dr. Patterson reiterated the history of injury, performed a physical examination, and reviewed a May 4, 2024 x-ray, which revealed a very small avulsion fracture fragment from the distal tip of the left fibula with adjacent soft tissue swelling. She diagnosed other fracture of upper and lower end of fibula and continued to release appellant to seated-duty work with use of an orthotic boot.

In a June 10, 2024 medical report, Dr. Roberto Brandão, a Board-certified foot and ankle surgeon, noted a history of a work-related left ankle injury on "May 3rd or 4th, 2024." He performed a physical examination, which revealed pain over the ATFL, and insertion at the distal fibula and slight instability during anterior drawer test. Dr. Brandão obtained x-rays showing a "possibility of the very small distal avulsion fracture of the fibula." He diagnosed left ankle sprain and nondisplaced distal fibular avulsion fracture due to the work injury. Dr. Brandão also noted that appellant "had an injury noted to this I think about 8 or 9 months ago in October 2023. No physical therapy was done she was able to return to work [sic]." He recommended seated-duty work and physical therapy.

In a June 25, 2024 development letter, OWCP informed appellant of the deficiencies of her claim, advised her of the type of factual and medical evidence necessary to establish her claim, and provided a factual questionnaire for her completion. It afforded her 60 days to submit the necessary evidence.

In a medical report and Form CA-20 dated July 10, 2024, Dr. Patterson reiterated the history of injury, documented physical examination findings, recommended physical therapy, and diagnosed other fracture of upper and lower end of left fibula. She checked a box marked "Yes" indicating that the condition was caused or aggravated by an employment activity. In a Form CA-17 of even date, Dr. Patterson released appellant to return to work with no more than two hours of standing, walking, and climbing and no lifting greater than 10 pounds. She also indicated "seated job only, must wear orthotic boot. Then on Monday [July 15, 2024] [appellant] is released to be able to case the mail."

In a follow-up development letter dated July 19, 2024, OWCP advised appellant that it had conducted an interim review, and the factual and medical evidence remained insufficient to establish her claim. It noted that she had 60 days from the June 25, 2024 letter to submit the requested supporting evidence.

OWCP continued to receive evidence. In a follow-up report dated July 23, 2024, Dr. Brandão noted physical examination findings, and again recommended physical therapy and work restrictions.

Reports of physical therapy dated July 24 through August 16, 2024 indicated that appellant related that "she was coming down stairs at work while coming down steps and when stepping down her ankle cracked, and she fell down."

In a letter dated August 20, 2024, Dr. Brandão recommended that appellant maintain her current light-duty restriction for three weeks, after which she could increase to four to six hours per day for the next three weeks, and thereafter, she could return to full duty.

By decision dated August 27, 2024, OWCP denied appellant's traumatic injury claim, finding that she had not submitted sufficient evidence to establish that the events occurred, as alleged. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[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

[3] *Supra* note 1.

[4] *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.[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 first must 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 established that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused an injury.[7]

To establish that an injury occurred as alleged, the injury need not 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.[8] The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on 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 the employee's statements in determining whether a *prima facie* case has been established.[9] 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.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on May 3, 2024 as alleged.

In her Form CA-1, appellant alleged that she injured her left ankle when she when she rolled her ankle as she stepped on grass. OWCP, in its June 25, 2024 development letter, notified her of the type of evidence needed to establish her traumatic injury claim, and provided a factual questionnaire for her completion. In a follow-up development letter dated July 19, 2024, it advised appellant that it had conducted an interim review, and the factual evidence remained insufficient to establish her claim. OWCP noted that she had 60 days from the June 25, 2024 letter to submit the requested supporting evidence. However, no response was received.

[5] *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).

[6] *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).

[7] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *S.W.*, Docket No. 17-0261(issued May 24, 2017).

[9] *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

[10] *Supra* note 4; *L.M.*, Docket No. 21-0109 (issued May 19, 2021).

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.[11] However, in this instance, appellant did not provide a statement as to how the injury occurred. As noted, she bears the burden of submitting a factual statement describing the alleged traumatic incident.[12] Despite OWCP's request for clarification of the factual circumstances of her claim, appellant failed to respond.[13]

Further, the history of injury appellant related to her medical providers detailed inconsistent descriptions of the mechanism of injury.[14] Ms. Luong, in her May 4, 2024 note and forms, indicated that appellant related histories that on May 3, 2024 she "stepped off a step on uneven ground," "rolled left ankle," or "stepped down on left foot onto grass and ankle cracked." Dr. Patterson, in her May 17 through July 10, 2024 medical reports, noted that appellant related a history of "carrying packages and the packages fell and landed on my ankle" and that "she was carrying packages, packages shifted causing her to be off balance and she rolled her left ankle." In his June 10, 2024 medical report, Dr. Brandão noted a history of a work-related left ankle injury on "May 3rd or 4th, 2024," and that "[appellant] had an injury noted to this I think about 8 or 9 months ago in October 2023." Reports of physical therapy dated July 24 through August 16, 2024 indicated that appellant related that "she was coming down stairs at work while coming down steps and when stepping down her ankle cracked, and she fell down."

These circumstances, which include a vague description of how the injury occurred and inconsistent histories, cast serious doubt on the validity of the claim.[15]

Accordingly, the Board finds that appellant has not established an injury in the performance of duty.

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 injury in the performance of duty on May 3, 2024, as alleged.

[11] *C.C.*, Docket No. 10-2054 (issued July 8, 2011).

[12] *D.C.*, Dockt No. 18-0314 (issued September 24, 2019); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

[13] *See C.B.*, Docket No. 24-0301 (issued May 6, 2024).

[14] *Id.*; *See L.Y.*, Docket No. 21-0221 (issued June 30, 2021).

[15] *C.B.*, *id.*; *See D.T.*, Docket No. 22-1156 (issued April 24, 2023).

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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