



## **FACTUAL HISTORY**

On December 3, 2020 appellant, then a 56-year-old postal employee, filed a traumatic injury claim (Form CA-1) alleging that on November 19, 2020 she tripped over straps after exiting her vehicle and suffered from contusions to both knees and her left hand. On the reverse side of the claim form, appellant's supervisor acknowledged that she was injured in the performance of duty.

On November 19, 2020 the employing establishment issued an authorization for examination and/or treatment (Form CA-16) wherein appellant's history of injury regarding a fall after exiting a vehicle was noted.

In a development letter dated December 10, 2020, OWCP informed appellant that additional factual and medical evidence was necessary to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant submitted several reports dated December 7, 2020 from Dr. Mauricio F. Herrera, Board-certified in orthopedic sports medicine. Dr. Herrera related that she fell at work onto both knees on November 19, 2020 and that she sought treatment at the emergency room the following day. He diagnosed: osteoarthritis, right and left knee; effusion, right knee; osteophyte, left knee; and bursitis of knee, left knee and indicated that appellant's conditions were work related.

By decision dated April 19, 2021, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the November 19, 2020 incident occurred as alleged. It noted that she had not provided a detailed statement in response to its development letter.

## **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

---

<sup>3</sup> *Id.*

<sup>4</sup> *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. There are two components involved in establishing fact of injury. 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. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<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 of 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. 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 case has been established. 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.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has met her burden of proof to establish an employment incident in the performance of duty on November 19, 2020, as alleged.

As noted, an employee's statement alleging that an injury occurred at a given time and place, and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>10</sup> Appellant alleged that she sustained an injury to her left and right knees on November 19, 2020 when she tripped and fell after exiting her employing establishment vehicle. The employing establishment issued a Form CA-16 on November 19, 2020 where her history of injury was noted. Additionally, appellant sought medical care on December 7, 2020 with Dr. Herrera. He noted her history of injury on November 19, 2020 and diagnosed bilateral knee

---

<sup>5</sup> *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> *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> *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).

<sup>8</sup> *See J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

<sup>9</sup> *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

<sup>10</sup> *See id.*

osteoarthritis, right knee effusion, left knee osteophyte and bursitis. The injuries appellant claimed are consistent with the facts and circumstances she set forth, her actions, and the medical evidence she submitted. The Board thus finds that she has met her burden of proof to establish an employment incident in the performance of duty on November 19, 2020, as alleged.

As appellant has established that the November 19, 2020 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.<sup>11</sup> As OWCP found that appellant had not established fact of injury, it has not evaluated the medical evidence. The Board will, therefore, set aside OWCP's April 19, 2021 decision and remand the case for consideration of the medical evidence of record.<sup>12</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish an injury causally related to the accepted November 19, 2020 employment incident.<sup>13</sup>

### CONCLUSION

The Board finds that appellant has met her burden of proof to establish an employment incident in the performance of duty on November 19, 2020, as alleged. The Board further finds that the case is not in posture for decision regarding whether the medical evidence is sufficient to establish an injury causally related to the November 19, 2020 employment incident.

---

<sup>11</sup> See *M.H.*, Docket No. 20-0576 (issued August 6, 2020); *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

<sup>12</sup> *M.H.*, *id.*; *S.M.*, Docket No. 16-0875 (issued December 12, 2017).

<sup>13</sup> The Board notes that the employing establishment issued a Form CA-16, dated November 19, 2020. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 19, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 28, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board