

FACTUAL HISTORY

On January 21, 2010 appellant, then a 38-year-old border patrol agent, filed a Form CA-1 for traumatic injury, alleging that he aggravated his right knee on that day while operating a backhoe at work.² He did not incur any time loss due to disability.

OWCP informed appellant in an April 12, 2010 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit a statement describing the employment incident that contributed to his preexisting condition and a physician's report offering a reasoned opinion explaining how the incident aggravated the injury. Appellant did not respond.

By decision dated May 13, 2010, OWCP denied appellant's claim, finding the evidence insufficient to establish that he experienced the employment incident alleged to have occurred.

Appellant filed a request for reconsideration on June 7, 2010 and submitted a May 3, 2010 medical report from Dr. Robert M. Maywood, a Board-certified orthopedic surgeon, who specified that appellant was using heavy equipment at work on April 25, 2008 when the vehicle fell into a pothole, injuring his right knee. Thereafter, Dr. Maywood constantly pressed the foot pedal, which led to additional swelling. Appellant complained of pain since the incident. On examination, Dr. Maywood observed tenderness to palpation along the medial joint line, effusion and a positive Steinmann's test. X-rays did not show any bony abnormality. Dr. Maywood diagnosed a right medial meniscus tear and chondral condition and opined that the injury was consistent with and caused by the April 25, 2008 event.

On September 2, 2010 OWCP denied modification of the May 13, 2010 decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,³ including that he is an "employee" within the meaning of FECA and that he filed his claim within the applicable time limitation.⁴ The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.⁵

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 actually experienced the employment incident at

² Appellant filed a prior claim for an April 25, 2008 right knee injury, which was denied on April 12, 2010.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁴ *R.C.*, 59 ECAB 427 (2008).

⁵ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

An employee's statement 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.⁷ Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden in 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. Circumstances such 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 doubt on an employee's statement in determining whether a *prima facie* case has been established.⁸

ANALYSIS

Appellant has not sufficiently established that he experienced a January 21, 2010 work incident while in the performance of duty because his claim lacks specificity regarding the claimed mechanism of injury.⁹

In the original Form CA-1, appellant stated that he aggravated a preexisting right knee condition on January 21, 2010 while operating a backhoe at work. Although he identified the time and place of injury, his account of the manner in which he hurt his knee was vague and incomplete.¹⁰ On April 12, 2010 OWCP informed appellant that additional factual evidence was needed to establish his traumatic injury claim and gave him an opportunity to clarify the details of the purported incident. Appellant did not respond. On reconsideration, he submitted a May 3, 2010 medical report from Dr. Maywood diagnosing a right medial meniscus tear and chondral condition. Nevertheless, this report only noted that he previously sustained a right knee injury on April 25, 2008 and did not refer to a January 21, 2010 employment incident. Appellant did not submit a responsive statement providing details regarding how his claimed injury occurred on January 21, 2010. In the absence of necessary factual evidence, the Board finds that appellant has failed to establish a *prima facie* claim.¹¹

⁶ *T.H.*, 59 ECAB 388 (2008).

⁷ *Gregory J. Reser*, 57 ECAB 277 (2005); *R.T.*, Docket No. 08-408 (issued December 16, 2008).

⁸ *Betty J. Smith*, 54 ECAB 174 (2002).

⁹ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *M.F.*, Docket No. 10-1514 (issued March 11, 2011).

¹⁰ *See Contreras*, *supra* note 9.

¹¹ *See O.W.*, Docket No. 09-2110 (issued April 22, 2010). As appellant did not meet his burden to establish the occurrence of an employment incident, it is not necessary to consider the medical evidence with regards to causal relationship. *D.F.*, Docket No. 10-1774 (issued April 18, 2011).

The Board notes that appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal.¹² However, appellant may submit new evidence or argument as part of a formal 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 did not establish that he sustained a traumatic injury in the performance of duty on January 21, 2010.

ORDER

IT IS HEREBY ORDERED THAT the September 2 and May 13, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 15, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

¹² 20 C.F.R. § 501.2(c).