

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

J.E., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Miami, FL, Employer**

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**Docket No. 08-892
Issued: August 21, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 5, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' November 5, 2007 merit decision which denied his claim for a traumatic injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has established that he sustained a traumatic injury on May 15, 2007 causally related to factors of his federal employment.

FACTUAL HISTORY

On September 28, 2007 appellant, then a 64-year-old mail carrier, filed a traumatic injury claim alleging that on May 15, 2007 he fell and broke a tooth while in the performance of duty. He did not stop work. Appellant's supervisor, China Velez, noted on the CA-1 form that appellant failed to report the incident to a manager or a supervisor when he returned to the employing establishment after the alleged incident. She indicated that appellant was on annual

leave the following week after the alleged incident. Ms. Velez noted first learning of the claimed injury on September 27, 2007.

Appellant submitted a statement dated July 3, 2007. He noted that, on May 15, 2007, after delivering a parcel, he returned to his mail truck and fell breaking his front tooth.

By letter dated October 3, 2007, the Office requested additional factual and medical information from appellant stating that the information submitted was insufficient to establish an injury, as alleged. It requested that he explain the delay in filing his claim.

Appellant submitted a copy of the employing establishments leave buyback policy.

In a November 5, 2007 merit decision, the Office denied appellant's claim, finding that the evidence was insufficient to establish that the claimed employment incident occurred as alleged.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of the claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

In order to determine whether an employee sustained an injury in the performance of her duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.³ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁴

Regarding the first component of fact of injury, an alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. A consistent history of the injury, as reported on medical reports to the claimant's supervisor and on the

¹ 5 U.S.C. §§ 8101-8193.

² *Barbara R. Middleton*, 56 ECAB 634 (2005); *Caroline Thomas*, 51 ECAB 451 (2000).

³ *Id.*

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

notice of injury, can also be evidence of the occurrence of the incident. 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 cast doubt on an employee's statements in determining whether he or she has established a *prima facie* case. The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged by a preponderance of the reliable, probative and substantive evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. However, 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.⁵

ANALYSIS

Appellant alleged that, on May 15, 2007, while delivering his mail route, he fell and broke his tooth. However, he has not established the factual aspect of his claim. Appellant has not submitted sufficient evidence to establish that he experienced the employment incident at the time, place and in the manner alleged.⁶ He did not stop work at the time of the alleged injury nor is there evidence that he sought medical treatment. There were no witnesses to the alleged incident and no contemporaneous statement from appellant's supervisor indicating she was informed of the incident. Rather, Ms. Velez noted on the CA-1 form that appellant failed to report the incident to a manager or a supervisor when he returned to the employing establishment after delivering his mail route. She contended that had appellant sustained an injury to his tooth other coworkers would have noticed the injury upon his return to the employing establishment. Ms. Velez indicated that appellant was on annual leave the following week after the alleged incident. Additionally, appellant did not file a traumatic injury claim for over four months following the alleged incident and never addressed his delay in filing the claim. The circumstances of late notification, lack of confirmation and continuing to work without difficulty cast doubt on appellant's claim.

The only evidence submitted was a copy of the employing establishment leave buyback policy; however, this document did not address whether appellant sustained a work-related injury on May 15, 2007. As noted, there is no evidence that appellant sought immediate medical treatment after the alleged May 15, 2007 incident. In fact, no medical evidence was submitted by appellant in support of his claim.

On October 3, 2007 the Office advised appellant of the deficiencies in his claim and requested that he explain the delay in filing his claim, describe the immediate effects of the claimed injury and provide statements from witnesses or persons who had immediate knowledge of the claimed incident. However, appellant did not submit any evidence that addressed these matters. The Board finds that the inconsistencies in the evidence cast serious doubt upon the validity of the claim. Appellant has not met his burden of proof as he has not

⁵ See *supra* note 2.

⁶ Julie B. Hawkins, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

established that he experienced the May 15, 2007 incident at the time, place and in the manner alleged.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a traumatic injury in the performance of duty on May 15, 2007.

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 21, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board