



documentation. Appellant's supervisor noted on the claim form that appellant was in the performance of duty at the time of the alleged incident.

In a letter dated May 26, 2011, OWCP informed appellant that the information submitted was insufficient to establish that the incident had occurred as alleged or that he had sustained an injury as a result of the claimed event. It advised him to describe the circumstances surrounding that claimed incident, including the immediate effects of the incident and what he did immediately thereafter. OWCP also advised appellant to submit a detailed report from his treating physician which included a history of how the claimed injury occurred, a diagnosis and an opinion on how the condition was causally related to the claimed injury. The letter informed him that, if he failed to respond to OWCP's request within 30 days, a decision would be made based upon the current evidence of record. On that same date, OWCP requested information from appellant as to any third party that may have been responsible for his claimed injury.

Appellant submitted a May 31, 2011 duty status report from Dr. Roland Rose, a chiropractor, reflecting that appellant injured his tailbone on May 9, 2011. On June 15, 2011 Dr. Rose stated that he was treating appellant for a May 9, 2011 work-related injury that resulted in cervical disc displacement; cervical and lumbar joint dysfunction; fractured coccyx and traumatic cervical sprain.

By decision dated June 28, 2011, OWCP denied the claim on the grounds that the fact of injury was not established.<sup>2</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing the essential elements of his claim including the fact that the individual is an employee of the United States, that the claim was timely filed within the applicable time limitation period, 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.<sup>3</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," namely, he must submit sufficient evidence to

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<sup>2</sup> The Board notes that appellant submitted additional evidence after OWCP rendered its November 18, 2005 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged, and that such event, incident or exposure caused an injury.<sup>5</sup>

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 subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant's statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>6</sup>

### ANALYSIS

It is not disputed that appellant was in the performance of duty at the time of the alleged incident; the Board finds however that appellant failed to establish the fact of injury. He did not meet his burden of proof to establish that he sustained a traumatic injury on May 9, 2011.

In his CA-1 form, appellant provided no detailed account of the alleged injury or corroborating evidence, such as witness statements. He presented no evidence regarding the specific mechanism of injury, as required in a claim for traumatic injury, nor did he allege that he experienced a specific event, incident or exposure at a definite time, place and manner.<sup>7</sup> Appellant did not advise whether he was standing in a crosswalk when he was hit or whether he was crossing the street in furtherance of his carrier duties. He did not describe the exact and immediate consequences of the injury, (*e.g.*, whether he was bumped by the vehicle, whether he fell, whether he was thrown over the vehicle). Appellant did not identify the third party who allegedly hit him. His vague recitation of the facts does not support his allegation that a specific event occurred which caused a work-related injury.<sup>8</sup>

OWCP informed appellant that the information initially provided was insufficient to establish his claim and advised him to provide factual details which would clarify the nature of his claim. Appellant provided no response, however, to OWCP's request for information.

The contemporaneous medical evidence of record is also insufficient to establish appellant's claim. Dr. Rose stated that he was treating appellant for a May 9, 2011 work-related injury that resulted in cervical disc displacement; cervical and lumbar joint dysfunction; fractured coccyx and traumatic cervical sprain. His reports, however, did not provide a detailed history of injury describing the time, place and manner in which the alleged injury occurred, or

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<sup>5</sup> See *Paul Foster*, 56 ECAB 208 (2004); see also *Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002); 5 U.S.C. § 8101(5). See 20 C.F.R. § 10.5(ee).

<sup>6</sup> See *Betty J. Smith*, *supra* note 5.

<sup>7</sup> See *Betty J. Smith*, *supra* note 5; see also *Tracey P. Spillane*, *supra* note 5.

<sup>8</sup> See *Paul Foster*, *supra* note 5 (the Board found that appellant had failed to establish the fact of injury where his allegations were vague and undocumented and did not relate with specificity the cause or immediate consequences of the claimed injury).

identify a specific causative event. Therefore, Dr. Rose's report is insufficient to establish that the incident occurred as alleged.

Appellant has not met his burden of proof to establish that he experienced the employment incident at the time, place and in the manner alleged, or that it caused an injury. As he has not met his burden of proof to establish the fact of injury, it is not necessary to discuss the probative value of the medical reports.<sup>9</sup>

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 did not meet his burden of proof to establish that he sustained a traumatic injury to his lower back on May 9, 2011.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 28, 2011 is affirmed.

Issued: February 15, 2012  
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

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<sup>9</sup> See Tracey P. Spillane, *supra* note 5.