United States Department of Labor
Employees' Compensation Appeals Board

J.Z., Appellant	)	
and	)	**Docket No. 14-455**
	)	**Issued: June 16, 2014**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, San Diego, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 23, 2013 appellant filed an appeal of a November 18, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for traumatic injury. 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 the claim.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a traumatic injury on October 14, 2013.

On appeal, appellant asserts that the factual and medical evidence of record established that he injured his left thumb in the performance of duty on October 14, 2013 while closing a heavy trunk lid during a vehicle inspection. He contends that any discrepancies in whether the vehicle was a car or a sports utility vehicle (SUV) were due to being examined by different

[1] 5 U.S.C. § 8101 *et seq.*

physicians who used slightly different vocabulary. Appellant argues that these minor inconsistencies are immaterial to the claim.

FACTUAL HISTORY

On October 14, 2013 appellant, then a 31-year-old customs and border protection officer, filed a claim for traumatic injury (Form CA-1) asserting that, at 8:15 a.m. that morning, he heard a pop and felt a sharp pain in his left thumb when he closed a heavy trunk lid while inspecting a motor vehicle. He stopped work after the injury, reported it to his supervisor at 11:30 a.m., then sought treatment at a hospital emergency room. On the reverse of the form, appellant's supervisor noted that his knowledge of the facts of the incident agreed with appellant's account of events. The employing establishment authorized medical treatment for a left thumb injury occurring on October 14, 2013.

OWCP advised appellant by October 17, 2013 letter of the evidence needed to establish his claim, including factual evidence corroborating the claimed incident and a statement from his physician supporting that the incident caused the claimed left thumb injury. It afforded him 30 days to submit such evidence.

In an October 14, 2013 triage report, George Zambrana, a physician's assistant, related appellant's account of hyperextending his left thumb at work when a vehicle tailgate "came back open."[2]

In an October 14, 2013 report, Dr. Anthony R. Marks, an attending physician Board-certified in emergency medicine, related appellant's account of injuring his left thumb that morning at work. He stated: "as he was inspecting an SUV, he was closing the tailgate door which sprung back open, hyperextended his left thumb." Dr. Marks diagnosed a left thumb sprain.

In an October 18, 2013 report, Dr. Julia S. Rodriguez, a Board-certified family practitioner associated with an occupational health clinic, related appellant's account of injuring his left thumb at work on October 14, 2013 "while lifting up a hatchback on a car to look at the interior of the car, the hatchback sprung backward and he hyperextended his left thumb." She diagnosed a left hand injury.[3]

By decision dated November 18, 2013, OWCP denied appellant's claim. It found that fact of injury was not established due to inconsistencies in the evidence. OWCP found that the claimed October 14, 2013 incident was variously described as closing a vehicle trunk, an SUV tailgate springing backwards and a car hatchback springing backwards. It found that these inconsistencies cast serious doubt on the validity of his claim.

[2] October 14, 2013 x-rays of the left thumb were within normal limits, without evidence of fracture, dislocation, soft tissue changes or arthritic change.

[3] In an October 28, 2013 report, Dr. Robert D. Power, a physician specializing in occupational medicine, diagnosed a resolving left hand sprain. It is not clear from the record if Dr. Power was an attending physician or a consultant to the employing establishment.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[6]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.[7] 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.[8]

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.[9] 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 or her 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.[10]

ANALYSIS

Appellant claimed that he sustained a left thumb injury at work while closing a vehicle trunk lid during an inspection. OWCP denied the claim, finding that there were factual discrepancies regarding the mechanism of injury that cast doubt on the validity of the claim. The

[4] 5 U.S.C. §§ 8101-8193.

[5] *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[7] *Gary J. Watling*, 52 ECAB 278 (2001).

[8] *Deborah L. Beatty*, 54 ECAB 340 (2003).

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

[10] *Betty J. Smith*, 54 ECAB 174 (2002).

Board finds that the minor variations in how appellant's medical providers described the incident do not preclude him from establishing that the claimed incident occurred as alleged.

In his October 14, 2013 claim form, filed on the date of injury, appellant stated that he felt a pop and sharp pain in his left thumb while closing a vehicle trunk lid during an inspection. Mr. Zambrana, a physician's assistant, who took a history shortly after the incident, related that appellant hyperextended his left thumb when a vehicle tailgate "came back open." Dr. Marks, Board-certified in emergency medicine, related that appellant hyperextended his left thumb when the vehicle tailgate he was closing sprung back open. Dr. Rodriguez, Board-certified in family practice, noted that on October 14, 2013, appellant hyperextended his left thumb when a vehicle "hatchback sprung backward."

The Board finds that the accounts of the October 14, 2013 incident are substantially similar. They support the statement on his claim form that he injured his left thumb while closing the back of a vehicle during an inspection. Whether the door involved was referred to as a trunk lid, tailgate or hatchback is nondispositive. The variations in the description of the motor vehicle do not create any question as to whether the incident occurred at work on October 14, 2013. Appellant reported the injury on the date of the incident and sought medical treatment within hours of the claimed incident. The employing establishment did not controvert the claim or allege that the incident did not occur as claimed. The Board finds that appellant has established that the October 14, 2013 incident occurred at the time, place and in the manner alleged.

As OWCP denied the claim based on its finding that the claimed incident did not occur as alleged, it did not consider the medical evidence in the claim. As appellant has established fact of incident, the case will be remanded to OWCP for appropriate consideration and development of the medical record to determine if the incident caused an injury, followed by issuance of a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for a decision. The case will be remanded to OWCP for development of the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 18, 2013 is set aside and the case remanded for additional development consistent with this decision.

Issued: June 16, 2014
Washington, DC

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

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

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