



not belong to the person that he was interviewing and was from another home. The location of the injury was identified as Mead, OK. Appellant's supervisor checked a box on the claim form to indicate that his knowledge of the facts about the claimed injury agreed with the statement provided by appellant. He also indicated that appellant did not stop work, that he received medical care on the date of injury, and that he returned to work on December 18, 2014.

By letter dated January 26, 2015, OWCP informed appellant that the evidence of record was insufficient to support his claim as there was no medical evidence establishing a firm medical diagnosis with a rationalized opinion addressing causal relationship. It requested the required medical evidence and provided him 30 days to respond.

In a December 17, 2014 medical report, Dr. Joaquin M. Forbes, a treating emergency room (ER) physician, noted the history of physical injury stating that appellant was bitten by a pit bull on that date at approximately 1:00 p.m. He noted that appellant worked for the U.S. Census Bureau, had been around that neighborhood in the past, and believed that he knew the owner, but did not know if the dog's rabies vaccinations were up to date. Appellant did not think much about the bite until he noticed that he was bleeding through his jeans. Dr. Forbes' report contained a nurse's note from Barbara Freeman, a Licensed Practical Nurse, which identified the chief complaint as, "[b]itten by a dog in Mead, [OK] while going to a friend's house, small broken and bruised area to outer left thigh. Stated it bled a little." Upon physical examination, he diagnosed skin lesion and prescribed outpatient medications.

By letter dated March 5, 2015, appellant reported that he notified his supervisor of his injury immediately after the incident. He reported having to drive 14 miles each way to have the dog tested for rabies. Appellant requested that OWCP reimburse him for the \$100.00 he spent to have the dog tested for rabies. He provided a December 18, 2014 receipt for \$100.00 of rabies testing at Bryan County Animal Hospital.

A December 18, 2014 rabies submission form noted that the dog was found dead on the road and was not sick. The date of death was noted as December 17, 2014. Appellant was identified as both the owner of the dog and the person exposed to the animal bite. Laboratory results revealed negative findings that the rabies virus was not detected by fluorescent antibody test.

By decision dated April 1, 2015, OWCP denied appellant's claim finding that the evidence of record failed to establish that the December 17, 2014 employment incident occurred at the time, place, and in the manner alleged. It noted that his statements were inconsistent with the account related by his medical providers.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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 or specific condition for which compensation is claimed are causally related to the

employment injury.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.<sup>3</sup>

To determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>4</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he or she sustained an injury in the performance of duty he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. He or she must also establish that such event, incident, or exposure caused an injury.<sup>5</sup> Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation is causally related to the accepted injury.<sup>6</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 or her subsequent course of action. In determining whether a 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 the employee'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>7</sup>

OWCP procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.<sup>8</sup> In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.<sup>9</sup>

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<sup>2</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>3</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>4</sup> *Elaine Pendleton*, *supra* note 2.

<sup>5</sup> *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

<sup>6</sup> *Supra* note 4.

<sup>7</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3 (January 2013).

<sup>9</sup> *Id.*

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such a causal relationship.<sup>10</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>11</sup>

### ANALYSIS

Appellant must establish all of the elements of his claim in order to prevail. He must prove his employment, the time, place, and manner of injury, a resulting personal injury, and that his injury arose in the performance of duty. In its April 1, 2015 decision, OWCP found that appellant had not established that the incident occurred at the time, place, and in the manner alleged. The Board finds that he failed to establish that he sustained a traumatic injury in the performance of duty on December 17, 2014, as alleged. Appellant's presentation of the facts is not supported by the evidence of record and does not establish his allegation that a specific event occurred in the performance of duty which caused an injury on the date in question.<sup>12</sup>

Inconsistencies in the record cast serious doubt on the validity of appellant's claim. Appellant alleged that he was bitten by a dog in the performance of duty on December 17, 2014 and sustained a puncture wound to his upper left thigh. His CA-1 form explained that he was bitten by a pit bull at 1:15 p.m. while he was working on a case interview in Mead, OK. OWCP's April 1, 2015 decision denied fact of injury due to inconsistencies between appellant's statement and his physician's December 17, 2014 medical report. Dr. Forbes' December 17, 2014 medical report stated that appellant was bitten by a pit-bull dog at approximately 1:00 p.m. He noted that appellant worked for the U.S. Census Bureau, had been around that neighborhood in the past, and believed that he knew the owner, but did not know if the dog's rabies vaccinations were up to date. In that same report, Nurse Freeman notes that appellant was "bitten by a dog in Mead, [OK] while going to a friend's house, small broken and bruised area to outer left thigh." The Board notes that his history of injury varies with that provided by Nurse Freeman. It is unclear whether appellant was injured in the performance of duty during a client interview or whether he deviated from his employment and was injured when visiting a friend. The medical evidence fails to support the surrounding facts and circumstances.<sup>13</sup>

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<sup>10</sup> See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>11</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>12</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>13</sup> *R.M.*, Docket No. 11-1921 (issued April 10, 2012).

Moreover, the December 18, 2014 rabies submission form also raises questions as to the validity of appellant's claim. The form identified him as both the owner of the dog and person who was exposed to the animal bite. Appellant, on his form, however, claimed that the dog belonged to someone else. More questions are raised given that he owned the dog and submitted the dog for rabies testing yet claimed not to know who was the owner of the dog. The factual and medical evidence of record provides varying accounts of the December 17, 2014 employment incident. Appellant has stated conflicting versions of the facts surrounding his alleged injury and has not presented any evidence, such as witness statements, to substantiate any of his allegations.<sup>14</sup>

Appellant has not provided the sufficient detail needed to establish that the incident occurred in the manner alleged.<sup>15</sup> He did not submit a CA-1 form until January 20, 2015, more than one month after the incident. As there were no witness statements provided in support of appellant's claim and no contemporaneous statements from persons present supporting that the incident occurred as alleged, he has failed to establish that the incident occurred at the time, place, and in the manner alleged. While an injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, the employee's statement must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.<sup>16</sup>

The Board finds that based on a narrative statement from appellant and the remaining factual and medical evidence of record, that there are such inconsistencies as to cast serious doubt upon the validity of his claim. As appellant has not reconciled these contradictions in the record, the Board thus finds that he has not met his burden of proof to establish an employment-related incident at the time, place, and in the manner alleged.<sup>17</sup>

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a), and 20 C.F.R. §§ 10.606 and 10.607.

### **CONCLUSION**

The Board finds that appellant has not submitted sufficient evidence to establish that he sustained a dog bite injury in the performance of duty on December 17, 2014 as he failed to establish that the incident occurred as alleged.

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<sup>14</sup> *R.J.*, Docket No. 08-1653 (issued December 19, 2008).

<sup>15</sup> *Supra* note 12.

<sup>16</sup> *B.W.*, Docket No. 13-244 (issued May 13, 2013).

<sup>17</sup> Given that appellant did not establish an employment incident, further consideration of the medical evidence is unnecessary. See *Bonnie A. Contreas*, 57 ECAB 364, 368 n. 10 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated April 1, 2015 is affirmed.

Issued: September 25, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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