

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

Q.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Covina, CA, Employer**

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**Docket No. 14-1775
Issued: June 6, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 13, 2014 appellant filed a timely appeal from a July 24, 2014 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has established a traumatic injury in the performance of duty as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal after OWCP rendered its July 24, 2014 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board lacks jurisdiction to review this additional evidence. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On April 5, 2014 appellant, then a 43-year-old city mail carrier, filed a traumatic injury claim (Form CA-1) alleging that at 1:05 p.m. that day, he sustained a dog bite to his right calf while delivering mail. He explained that when he stepped out of his postal vehicle in front of a residence on his route, a dog living at the residence rushed him and bit his right calf. Appellant screamed, shook the dog off, and then drove a few houses away and called 911. The dog's owner then approached appellant's vehicle and threatened him. On the reverse of the form, appellant's supervisor checked boxes indicating that appellant was in the performance of duty at the time of the claimed injury and that his knowledge of the incident agreed with appellant's account of events. Appellant stopped work on April 5, 2014.

In support of his claim, appellant submitted an April 5, 2014 hospital drug prescription from Dr. James Kojian, an attending physician Board-certified in emergency medicine, prescribing antibiotics. Emergency room forms directed that appellant receive after care instructions for an animal bite. Appellant also submitted April 7 and 15, 2014 reports from Dr. Chiang Wang, a chiropractor, diagnosing shoulder and low back sprains and right leg pain. Dr. Wang held appellant off work through April 23, 2014.³

In a May 14, 2014 letter, OWCP advised appellant of the type of evidence needed to establish his claim, including factual evidence supporting timely filing and performance of duty. It noted that appellant had not yet submitted factual evidence corroborating his account of the April 5, 2014 incident. OWCP also noted that appellant had not yet provided medical evidence supporting that he sustained a dog bite as claimed. Appellant was afforded 30 days to submit such evidence.

In response, appellant submitted an April 5, 2014 report from a county emergency medical response unit, noting that at 2:17 p.m. that day, they responded to appellant's call to find him short of breath, with a "dog bite puncture right calf." He also provided an April 5, 2014 ambulance transport report noting that he had been found at the scene "in driver's seat of mail truck complaining of r[ight] calf pain due to dog bite." Appellant was then transported to a hospital emergency room.

By decision dated July 24, 2014, OWCP denied appellant's claim finding that fact of injury was not established. It found that appellant submitted insufficient factual evidence to establish that he was bitten by a dog on April 5, 2014 as alleged. OWCP noted that the April 5, 2014 ambulance report was insufficient to establish the incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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

³ In an April 16, 2014 report, a medical management nurse noted that appellant had not yet returned to work.

the employment injury.⁴ 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.⁵ 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 conjunctively. First, the employee must submit sufficient evidence to establish that he actually experienced the alleged employment incident.⁶ 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.⁷ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.⁸

An employee has the burden of establishing the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee’s statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁹ An employee has not met his or her burden of proof 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. 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, if otherwise unexplained, cast sufficient doubt on an employee’s statement in determining whether a *prima facie* case has been established. 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.¹⁰

ANALYSIS

Appellant alleged that he sustained a dog bite injury to his right calf on April 5, 2014. OWCP denied the claim by July 24, 2014 decision, finding that there was insufficient evidence to establish that the April 5, 2014 incident occurred as alleged.

The Board finds that appellant has presented sufficient evidence to meet his burden of proof to establish that the April 5, 2014 incident occurred as alleged. However, it further finds

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁷ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

⁹ *Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995); *Joseph H. Surgener*, 42 ECAB 541, 547 (1991).

¹⁰ *D.B.*, 58 ECAB 529 (2007); *Gregory J. Reser*, 57 ECAB 277 (2005).

that he had not met his burden of proof to establish that he sustained any disability causally related to the incident on April 5, 2014, as he failed to submit sufficient medical evidence in support of his claim.

On April 5, 2014 appellant was delivering mail when he alleges that he was bitten by a dog. He made a contemporaneous report of the incident to his supervisor and called for an ambulance. Thereafter, appellant was treated by first responders and later an emergency room physician for an obvious dog bite to his right calf muscles. The employing establishment has not controverted the incident as alleged in this claim. The Board therefore finds that appellant has met his burden of proof to establish that the incident on April 5, 2014 occurred as alleged.

In response to an initial development letter from OWCP, appellant submitted an April 15, 2014 emergency medical services report form from the Los Angeles County Fire Department. While this medical report is probative evidence as to the occurrence of the incident alleged, the Board has held that reports from emergency medical technicians are insufficient to establish disability as emergency medical technicians are not considered physicians as defined under FECA.¹¹ In addition, appellant submitted a signed form prescription slip from Dr. Kojain. The prescription form offered no description of the event and was devoid of any opinion as to medical causation. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹² Lastly, appellant submitted an April 14, 2014 excuse note from the Chaing Wang Chiropractic Corp. The reports from a chiropractor are of no probative medical value as he or she failed to diagnose spinal subluxation or document whether x-rays were taken.¹³

The evidence of record lacks probative value on the issue of causation. As such, the Board finds that appellant did not meet his burden of proof to establish his disability claim.

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 the appellant has met his burden of proof to establish that the April 5, 2014 incident occurred as alleged. The Board further finds that he has failed to establish an injury in the performance of duty on April 5, 2014.

¹¹ *E.K.*, Docket 09-1827 (April 21, 2010).

¹² *C.B.*, Docket no. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹³ Section 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the secretary. See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 24, 2014 is affirmed in part and modified as set forth in this decision.¹⁴

Issued: June 6, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

¹⁴ James A. Haynes, Alternate Judge participated in the original decision but was no longer a member of the Board effective November 16, 2015.