

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

B.W., Appellant

and

**DEPARTMENT OF THE ARMY, U.S. ARMY
AFRICA, APO, AE, Employer**

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**Docket No. 15-1270
Issued: March 11, 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
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 19, 2015 appellant filed a timely appeal from a December 30, 2014 merit 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.

ISSUE

The issue is whether appellant met his burden of proof to establish back and left leg injuries on August 10, 2014 while in the performance of duty.

FACTUAL HISTORY

On September 2, 2014 appellant, then a 51-year-old communication synchronization specialist, filed a traumatic injury claim (Form CA-1) alleging that on August 10, 2014 he sustained three herniated discs in his lower back and numbness in his left leg during official

¹ 5 U.S.C. § 8101 *et seq.*

travel. He stated that he walked with a limp due to his left leg numbness. Appellant stated that his injuries occurred on an outward bound flight to Honolulu, Hawaii on August 4, 2014 and worsened during a return flight to Italy on August 10, 2014. He stopped work on August 11, 2014 and returned to work the next day, August 12, 2014.

By letter dated November 19, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit a response to a questionnaire in order to substantiate the factual basis of his claim and medical evidence, including a rationalized medical opinion from an attending physician which provided dates of examination and treatment, history and date of injury, a detailed description of findings, x-ray and laboratory test results, diagnosis, and clinical course of treatment together with an opinion supported by a medical explanation as to how the reported work incident caused or aggravated a medical condition. OWCP also requested that the employing establishment submit medical evidence if appellant was treated at its medical facility. Both appellant and the employing establishment were afforded 30 days to submit the requested information.

In an August 9, 2014 medical report, Dr. Gianluca Coris, an anesthesiologist in Italy, provided a history that appellant had back pain and numbness in his left lower limbs that started in August 2014. He currently had back pain and severe numbness of the thigh and left foot toes which worsened after a long flight for work. Dr. Coris provided a history of appellant's medical and social background. He reviewed a lumbar magnetic resonance imaging (MRI) scan and diagnosed disesthesia of the left lower limb caused by root disorder of an L5-S1 disc herniation.

In an August 19, 2014 lumbar MRI scan report, Dr. Rubin Lorenzo, a radiologist, found vertebral bodies in volumetric limits. He also found in step L5-S1 gross disc herniation development in the paramedian left which migrated inferiorly along the back wall of S1 for about 1.5 centimeters and caused considerable root disorder at that level. Dr. Lorenzo further found disc protrusion of an extended range in step L4-L5 and L1-L2.

An unsigned operative report dated November 13, 2014 contained the printed name of Dr. Brett Freedman, a Board-certified orthopedic surgeon, and indicated that appellant underwent left L5-S1 microdiscectomy and nerve root decompression on that day.

A November 17, 2014 duty status report (Form CA-17), which contained an illegible signature, provided a date of injury of August 4, 2014 and described appellant's history of injury. Appellant reported extended sitting on a plane from Hawaii to Italy as he returned from training which caused herniated disc(s), and pain and numbness in his back and left leg. The report provided his work restrictions.

In a December 30, 2014 decision, OWCP denied appellant's claim, finding that the evidence was insufficient to establish an injury on August 10, 2014 as alleged. It stated that he had not responded to the factual questions posed in this case. OWCP stated that this information was imperative for a clear understanding of how his injury occurred.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 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.³ 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.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

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.⁶ 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.⁷

ANALYSIS

Appellant alleged that on August 10, 2014 while flying in the performance of duty he sustained three herniated discs in his lower back and numbness in his left leg. OWCP did not accept that the claimed work event occurred as alleged. The Board notes that there are inconsistencies in the evidence, as set forth below which cast serious doubt upon the validity of the claim. The Board finds that the claimed employment incident did not occur as alleged.

² *Id.*

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *id.*

⁵ *T.H.*, 59 ECAB 388 (2008).

⁶ *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

⁷ *Betty J. Smith*, 54 ECAB 174 (2002).

The case record contains differing statements regarding how appellant's alleged back and left leg injuries occurred. In his CA-1 form, he claimed that on August 4, 2014 he was injured on an outward bound flight to Honolulu, Hawaii and that his conditions worsened during a return flight to Italy on August 10, 2014. However, a November 17, 2014 Form CA-17 report from a physician with an illegible signature provided a history of injury that appellant's back and left leg conditions occurred while appellant was flying from Hawaii to Italy on August 4, 2014. Further, Dr. Coris, who was in Italy, indicated in his August 9, 2014 report, that he examined appellant on that day. His statement is contrary to appellant's allegation that he was returning to Italy at the time of injury on August 10, 2014.

The medical reports do not relate a consistent history of injury as described by appellant. Appellant also did not provide a detailed description as to how his injuries occurred as specifically requested by OWCP on November 19, 2014.

For these reasons, the Board finds that appellant has not established that the incident occurred as alleged. Because appellant has not established that the August 10, 2014 incident occurred, it is unnecessary for the Board to consider the medical evidence.⁸

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 back and left leg injuries on August 10, 2014 while in the performance of duty.

⁸ B.W., Docket No. 13-244 (issued May 13, 2013).

ORDER

IT IS HEREBY ORDERED THAT the December 30, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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