United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
and	)	**Docket No. 11-1376**
	)	**Issued: December 28, 2011**
DEPARTMENT OF THE NAVY, NAVAL FACILITIES ENGINEERING COMMAND, China Lake, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On May 17, 2011 appellant filed a timely appeal from a December 21, 2010 Office of Workers' Compensation Programs' (OWCP) merit decision denying his claim for an employment-related 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 this case.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a right knee injury in the performance of duty on June 10, 2010, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the December 21, 2010 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On October 26, 2010 appellant, then a 46-year-old sheet metal mechanic, filed a traumatic injury claim (Form CA-1) alleging that on June 10, 2010 he sustained a right knee injury as a result of jumping off the side of a flatbed truck while unloading material in the performance of duty.

By letter dated November 17, 2010, OWCP notified appellant of the deficiencies of his claim and requested factual and medical evidence. It allotted him 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted reports dated June 29 and November 1, 2010 by Susan Hammon, a nurse practitioner, who diagnosed ankle swelling, knee swelling and heat edema. Ms. Hammon released appellant without limitations and opined that his knee swelling did not appear to be work related.

By decision dated December 21, 2010, OWCP denied appellant's claim on the grounds that the evidence submitted was not sufficient to establish fact of injury finding that the injury did not occur as alleged and that there was no medical evidence supporting an employment-related injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 timely filed within the applicable time limitation period of FECA, that an injury[4] was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment

[3] 5 U.S.C. §§ 8101-8193.

[4] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[5] *T.H.*, 59 ECAB 388 (2008). *See Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[6]

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury while in the performance of duty. However, the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[7] 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 cast doubt on an employee's statements in determining whether he or she has established a *prima facie* claim for compensation. The employee has the burden of establishing the occurrence of an alleged injury at the time, place and in the manner alleged by a preponderance of the evidence.[8] An employee has not met this burden when there are such inconsistencies in the evidence that cast serious doubt upon the validity of the claim. However, 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 and persuasive evidence.[9]

ANALYSIS

The Board finds that appellant did not meet his burden of proof in establishing that on June 10, 2010 he sustained a right knee injury as a result of jumping off the side of a flatbed truck while unloading material in the performance of duty. As noted above, the first element of fact of injury requires that appellant submit evidence establishing that an incident occurred at the time, place and in the manner alleged. By letter dated November 17, 2010, OWCP advised appellant of the deficiencies of his claim and requested additional factual and medical evidence. Appellant did not submit a narrative statement or provide any additional factual information as requested. Moreover, the reports from Ms. Hammon, a nurse practitioner, are of no probative value as she is not a physician as defined under FECA.[10] Accordingly, the Board finds that appellant has not met his burden of proof in establishing that he experienced an employment-related incident at the time, place and in the manner alleged.[11]

[6] *Id. See Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

[7] *See Mary Jo Coppolino*, 43 ECAB 988 (1992).

[8] *See R.T.*, Docket No. 08-408 (issued December 16, 2008).

[9] *See Allen C. Hundley*, 53 ECAB 551 (2002); *Earl David Seal*, 49 ECAB 152 (1997).

[10] 5 U.S.C. § 8101(2). 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." *See also Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

[11] Given that appellant did not establish an employment incident, further consideration of the medical evidence is unnecessary. *See Bonnie A. Contreras*, 57 ECAB 364, 368 n.10 (2006).

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 has not submitted sufficient evidence to establish that the June 10, 2010 employment incident occurred as alleged.

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 28, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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