

FACTUAL HISTORY

On April 5, 2011 OWCP received an unsigned traumatic injury claim (Form CA 1), OWCP File No. xxxxxx009 alleging that appellant, then a 59-year-old nonfederal truck driver sustained a torn rotator cuff in his left shoulder on April 29, 2009. He experienced sharp pain in his right ankle that caused him to stumble and fall as he walked in his backyard.² Appellant broke his fall by using his left hand.

On the claim form, the employing establishment contended that on April 29, 2009 appellant was not in the performance of duty. It explained that he was not a federal employee and he fell at home.

By letter dated October 13, 2011, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It addressed the factual and medical evidence he needed to submit to support an injury. Also, OWCP requested that the employing establishment submit factual and medical evidence in response to appellant's claim.

In an October 12, 2011 letter, the employing establishment controverted appellant's claim based on inconsistencies regarding the cause of injury. It contended that there was no evidence establishing that he was a federal employee at the time of the April 29, 2009 incident. Appellant was working as a truck driver for a private company on the date of injury. The employing establishment also contended that he failed to submit any medical evidence to support his claim.

In an April 5, 2011 letter, appellant attributed his alleged left shoulder injury to a right ankle injury he sustained on May 30, 2008 while working as a truck driver. He stated that his May 30, 2008 right ankle injury was accepted by the Workers' Compensation Fund of Utah. Appellant further stated that the Utah Department of Labor determined that the medical evidence established that his left rotator cuff injury resulted from residuals of a June 7, 1989 employment injury and not the May 30, 2008 right ankle injury.

Appellant submitted a July 29, 2010 decision from the Utah Labor Commission Adjudication Division which found that he did not sustain left knee and shoulder injuries as a result of the May 30, 2008 injury. It concluded that neither his employer, Dave Brown Sales and Equipment, nor the Utah Workers' Compensation Fund, was responsible for payment of temporary total disability compensation or medical expenses related to his claimed conditions.

² Also, on April 5, 2011 appellant filed another Form CA-1 regarding the alleged injury he sustained on April 29, 2009 under OWCP File No. xxxxxx903. The Board notes that under File No. xxxxxx903 OWCP previously accepted that on June 7, 1989 he sustained an employment-related injury. Following the receipt of a November 16, 2010 correspondence discussing the process for reimbursement of medical expenses under OWCP File No. xxxxxx903, appellant appealed to the Board. In an order dated September 26, 2011, the Board dismissed his appeal, on the grounds that the record did not contain a final adverse OWCP decision over which it could take jurisdiction. The Board found that the record contained an informational letter dated November 16, 2010 which did not constitute a final adverse decision. Docket No. 11-471 (issued September 29, 2011). On return of the case record, by letter dated September 29, 2011, OWCP advised appellant that it could not adjudicate his traumatic injury claim for the purported injury sustained on April 29, 2009 as it did not constitute a valid submission of a new claim because it was not filed through the employing establishment.

In an October 31, 2011 letter, appellant contended that OWCP invented his nonfederal truck driver position because it “does not exist.” He further contended that there was no evidence to establish that David Brown Trucking, also known as David Brown Sales and Leasing was connected to the employing establishment or any other federal employer, not even as a federal contractor. Appellant stated that he never mentioned or claimed in his Form CA-1 that on April 29, 2009 he was a federal civilian employee. He related that he no longer worked at David Brown Trucking on the date of injury. Appellant pointed out that he was attributing his April 29, 2009 injury to the June 7, 1989 employment injury accepted by OWCP under claim File No. xxxxxx903 and, thus, he was a federal civil employee at the time of the April 29, 2009 injury.³ He noted the Utah Department of Labor’s decision and contended that since the residuals of his accepted June 7, 1989 employment injury were not limited to actual time on duty, it was not necessary to prove that his April 29, 2009 injury occurred while he was performing his official work duties.⁴

Appellant submitted a compact disc which contained medical evidence in support of his claim.

In a November 22, 2011 decision, OWCP denied appellant’s claim. It found that he was not a federal civil employee at the time of his injury on April 29, 2009. OWCP also found that the evidence failed to establish that the claimed injury occurred as alleged. Lastly, the medical evidence failed to establish a causal relationship between a medical condition and the April 29, 2009 incident.

LEGAL PRECEDENT

An employee seeking compensation under FECA⁵ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,⁶ including that he is an employee within the meaning of FECA⁷ and that he filed his claim within the applicable time limitation.⁸ The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.⁹

³ Under OWCP File No. xxxxxx903, OWCP accepted that appellant sustained closed fracture of scapula, contusion of face, scalp and neck, headache and psychogenic pain resulting from a federal employment-related injury sustained on June 7, 1989.

⁴ The Board notes that OWCP has not adjudicated whether the alleged April 29, 2009 injury is a consequence of the accepted June 7, 1989 employment injury in OWCP File No. xxxxxx903.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁷ *See M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

⁸ *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁹ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

Section 8102(a) of FECA provides that compensation can only be paid for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.¹⁰ For purposes of awarding compensation benefits under FECA, section 8101(1) defines employee, in relevant part, as a civil officer or employee in any branch of the government of the United States or as an individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States.¹¹ In determining whether a claimant is an employee for purposes of compensation, the Board will consider the particular facts and circumstances surrounding his or her employment.¹²

ANALYSIS

The Board finds that appellant has not submitted sufficient evidence to establish that he was an employee of the United States within the meaning of FECA at the time of his injury on April 29, 2009. The evidence, including his statements, indicates that he was not a federal civil employee. Appellant noted that he never claimed on his Form CA-1 that he was a federal civil employee on April 29, 2009. He stated that OWCP invented his “nonfederal” truck driver position as “it does not exist.” Appellant related that he worked for David Brown Trucking also known as David Brown Sales and Leasing. Although he had stopped work at the company as of the date of injury, the company was not connected to the employing establishment or any other federal employer or federal contractor. The employing establishment advised that appellant was not a federal employee as he worked as a truck driver for a private company at the time of the April 29, 2009 incident. The Board finds that there is no evidence of record to establish that he was a civil employee of the United States within the meaning of FECA on April 29, 2009.

On appeal, appellant contended that the evidence of record was sufficient to establish that he sustained an employment-related left shoulder injury. As stated, he has not established that he was a federal civil employee as defined under FECA at the time of his alleged injury on April 29, 2009. Appellant failed to meet his burden of proof in this case and, thus, OWCP properly denied his traumatic injury 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 appellant has failed to establish that he was a federal employee within the meaning of FECA for purposes of receiving compensation for his alleged April 29, 2009 left shoulder injury.

¹⁰ 5 U.S.C. § 8102(a).

¹¹ *Id.* at § 8101(1).

¹² *Wendy S. Warner*, 38 ECAB 103 (1986).

ORDER

IT IS HEREBY ORDERED THAT the November 22, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 2012
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