

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

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**F.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
San Antonio, TX, Employer**

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**Docket No. 12-369  
Issued: September 20, 2012**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On December 13, 2011 appellant filed a timely appeal from a July 27, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 that he sustained a right knee strain in the performance of duty on June 6, 2011.

**FACTUAL HISTORY**

On June 6, 2011 appellant, then a 40-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right knee injury that day when his knee popped while walking down the stairs. He noted that the injury occurred at 1:55 p.m. and listed the street

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

address of the alleged incident. Appellant stopped work and first received medical care on June 6, 2011. He notified his supervisor on June 14, 2011 and the employing establishment controverted the claim.

In a June 14, 2011 statement, Yvonne Lopez, appellant's coworker, reported that a week prior to the alleged June 6, 2011 employment incident, Rural Carrier Bracken overheard appellant stating that he could not work out anymore because he hurt his knee.

By letter dated June 20, 2011, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and directed to submit it within 30 days. He was provided a questionnaire and asked to address questions as to whether he had sustained any other injury, either on or off duty, before the date of injury, whether he had any similar disability or symptoms to his knee prior to the injury and whether the week prior to the reported incident he had informed a coworker that he could not work anymore because he had hurt his knee. Appellant did not respond to this request.

In medical reports dated June 6 to 27, 2011, Dr. James B. Baggett, Board-certified in family medicine, reported that appellant sought treatment on June 6, 2011 after walking down stairs and experienced a sudden pain and "pop" in his right knee. He reported that an x-ray showed no abnormalities and diagnosed right knee sprain. Appellant was treated with a knee brace and crutches but continued to experience difficulty with popping, pain and instability.

In duty status reports (Form CA-17) and work status reports dated June 6 to July 18, 2011, Dr. Baggett released appellant to work on June 6, 2011 with intermittent restrictions and no climbing stairs or ladders. Appellant was released to work without restrictions on July 18, 2011.

In reports dated July 5 to 14, 2011, Ginny Porrata, a physical therapist, reported that appellant was seeking physical therapy for right knee pain after he felt his knee pop while walking down stairs at work on June 6, 2011.

By decision dated July 27, 2011, OWCP denied appellant's claim finding that the evidence did not establish that the incident occurred as alleged. It also noted that he failed to establish a diagnosed medical condition causally related to the alleged employment incident.

### **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>

In order 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 sustained an injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.<sup>5</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 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>6</sup>

### ANALYSIS

The Board finds that appellant has failed to establish that the June 6, 2011 incident occurred as alleged. 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 July 27, 2011 decision, OWCP found that appellant did not establish that the incident occurred at the time, place and in the manner alleged. The Board will affirm this finding.

While an employee's statement carries great probative value and will stand unless refuted by strong or persuasive evidence, appellant has not substantiated his allegations, given the facts of this case.<sup>7</sup> On June 6, 2011 appellant filed a claim alleging that he injured his right knee at

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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 at 1143 (1989).

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

<sup>7</sup> *S.P.*, 59 ECAB 184 (2007).

work at 1:55 p.m. at a listed address when his knee “popped” while walking down a set of stairs. In a report dated June 6, 2011, Dr. Baggett noted that appellant experienced a pain and a pop in his right knee on that day when he was walking down the stairs. He found no abnormalities on x-ray and that appellant was able to bear weight with difficulty. Appellant also sought treatment from Ms. Porrata, a physical therapist. However, physical therapists are not considered physicians as defined by FECA.<sup>8</sup>

However, there are unexplained inconsistencies of record. The statement by Ms. Lopez indicates that a coworker overheard appellant state that he hurt his knee a week prior to the alleged June 6, 2011 employment incident. On June 20, 2011 OWCP requested that appellant respond to this statement and describe any prior knee injuries. Appellant did not respond. His lack of response, combined with the statement from Ms. Lopez casts doubt as to whether the incident occurred at the time, place and in the manner alleged. Appellant has not established that the incident occurred as alleged.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that the June 6, 2011 incident occurred as alleged.

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<sup>8</sup> *Supra* note 1.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 27, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 20, 2012  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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