



## **FACTUAL HISTORY**

On November 11, 2012 appellant, then a 57-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that he sustained injuries to his back, right hip and chest as a result of a motor vehicle accident which occurred in the performance of duty on November 5, 2012.

In a November 30, 2012 letter, OWCP notified appellant of the deficiencies of his claim and requested additional factual and medical evidence. It afforded him 30 days to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted a police accident report and emergency room reports dated November 5, 2012. On November 5, 2012 Dr. Alexis A. Halpern, a Board-certified emergency medicine physician, indicated that appellant was involved in a motor vehicle accident that day and diagnosed back and hip pain. She indicated that x-rays of the hip and pelvis and a computerized tomography (CT) scan of the neck were normal. X-rays of the back showed a possible fracture at L1 and Dr. Halpern referred appellant for further evaluation with a CT scan of the low back and pelvis. Dr. Halpern indicated that the study had not been completed as appellant was unable to wait for reimaging that day.

On November 13, 2012 Dr. Patrice Milord, a geriatrician, released appellant to resume all work activities with no restrictions. On December 1, 2012 she indicated that he had taken additional days off after the accident due to muscle ache.

By decision dated December 28, 2012, OWCP accepted that the November 5, 2012 incident occurred as alleged but denied the claim finding that appellant failed to submit evidence containing a medical diagnosis in connection with the injury or events. Thus, it concluded that he had not established fact of injury.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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<sup>4</sup> 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.<sup>5</sup>

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> OWCP 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).

<sup>5</sup> See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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 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.<sup>6</sup>

### ANALYSIS

OWCP has accepted that the employment incident of November 5, 2012 occurred at the time, place and in the manner alleged. The issue is whether appellant sustained an injury as a result. The Board finds that he did not meet his burden of proof to establish that he sustained an injury related to the November 5, 2012 employment incident.

In a November 5, 2012 emergency room report, Dr. Halpern indicated that appellant was involved in a motor vehicle accident that day and diagnosed back and hip pain. She indicated that x-rays of the hip and pelvis and a CT scan of the neck were normal. X-rays of the back showed a possible fracture at L1 and Dr. Halpern referred appellant for further evaluation with a CT scan of the low back and pelvis; however, the study was not completed as he was unable to wait for reimaging that day. The Board finds that Dr. Halpern’s diagnosis of back and hip pain is a description of a symptom rather than a clear diagnosis of the medical condition. The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis.<sup>7</sup> Therefore, the report from Dr. Halpern is insufficient to establish appellant’s burden of proof.

On November 13, 2012 Dr. Milord released appellant to resume all work activities with no restrictions and on December 1, 2012 indicated that he had taken additional days off after the accident due to muscle ache. As her reports do not provide a firm diagnosis, the Board finds that they are insufficient to establish his claim.<sup>8</sup>

Appellant submitted a November 5, 2012 police accident report in support of his claim. This document does not constitute medical evidence as it was not prepared by a physician.<sup>9</sup> As such, the Board finds that appellant did not meet his burden of proof with this submission.

As appellant has not submitted any medical evidence to support his allegation that he sustained an injury related to the November 5, 2012 employment incident, he has failed to meet his burden of proof to establish the medical component of fact of injury.

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<sup>6</sup> *Id.* See also *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> See *P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

<sup>8</sup> *Id.*

<sup>9</sup> See 5 U.S.C. § 8101(2).

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 met his burden of proof to establish that he sustained an injury in the performance of duty on November 5, 2012, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 28, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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