

He experienced a sharp right knee pain when he squatted on his leg reaching under a belt. The employing establishment controverted continuation of pay as it had not received notice within 30 days of injury.

In a report dated February 27, 2012, Dr. Le H. Vu evaluated appellant for a September 6, 2011 leg injury.² Appellant provided the history of injury as right knee pain after squatting down and reaching for mail. Dr. Vu noted that appellant had aggravated his injury the day before the evaluation while getting into a vehicle. He diagnosed knee pain and an unspecified sprain or strain of the knee or leg. Dr. Vu found that appellant could work wearing a brace and with restrictions of no lifting, pushing or pulling over 20 pounds.

In a March 5, 2012 progress report, Dr. Vu provided the same history of injury and diagnoses. He found that appellant could perform modified employment wearing a knee brace.

By decision dated March 8, 2012, OWCP denied appellant's request for continuation of pay as he had not reported his injury within 30 days.

On March 8, 2012 OWCP requested that appellant submit additional factual and medical information in support of his claim, including a detailed description of his work injury and any history of previous symptoms.

In a letter dated March 2, 2012, the employing establishment controverted the claim as appellant did not report the injury within six months and had worked his regular employment without apparent difficulty until February 27, 2012.

On March 12, 2012 Dr. Zoran Vukcevic, a surgeon, rechecked appellant for an injury dated September 6, 2011. He diagnosed an unspecified strain/sprain of the knee and leg. Dr. Vukcevic noted that appellant had returned to his usual employment and found that he had no impairment due to the injury.

By decision dated April 12, 2012, OWCP denied appellant's traumatic injury on the grounds that he did not establish fact of injury. It determined that the evidence did not establish that the incident occurred at the time, place and in the manner alleged.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ 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 and/or specific condition for which compensation is claimed are causally related to the

² The qualifications of this physician cannot be determined.

³ *Supra* note 1.

employment injury.⁴ 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.⁵

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁷ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁸

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.⁹ An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee’s statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.¹⁰ An employee has not met his or her burden of proof of 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.¹¹ 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, if otherwise unexplained, cast doubt on an employee’s statements.¹² However, an employee’s statement regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong or persuasive evidence.¹³

⁴ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁵ See *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁷ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁸ *Id.*

⁹ See *Louise F. Garnett*, 47 ECAB 639 (1996).

¹⁰ See *Betty J. Smith*, 54 ECAB 174 (2002).

¹¹ *Id.*

¹² *Linda S. Christian*, 46 ECAB 598 (1995).

¹³ *Gregory J. Reser*, 57 ECAB 277 (2005).

ANALYSIS -- ISSUE 1

On February 29, 2012 appellant filed a claim alleging that on September 6, 2011 he injured his right knee squatting down to reach under a belt. OWCP denied his claim after finding that he did not demonstrate that the specific event occurred at the time, place and in the manner alleged.

The initial question presented is whether appellant has established that the September 6, 2011 employment incident occurred as alleged. An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.¹⁴ An employee has not met his burden of proof when there are inconsistencies in the evidence sufficient to cast serious doubt on the validity of his or her claim.¹⁵

The Board finds that appellant has not established the occurrence of the September 6, 2011 incident. Appellant did not report his alleged injury to the employing establishment until February 29, 2012, almost six months later. He continued to perform his usual employment and did not seek medical treatment until February 2012. While medical reports submitted in February and March 2012 contain a history of injury consistent with appellant's description of the incident, in a report dated February 27, 2012, Dr. Vu also noted that appellant had aggravated his knee condition getting into a vehicle the previous day. OWCP requested that he provide a detailed description of the circumstances surrounding his work injury; however, he did not respond to the request for information. As appellant did not provide the factual evidence necessary to substantiate his claim, he has not met his burden of proof.¹⁶ He, therefore, has not met his burden of proof to establish his claim for compensation.

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 and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

OWCP regulations provide, in pertinent part, that to be eligible for continuation of pay, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file a Form CA-1 within 30 days of the date of injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.¹⁷

¹⁴ See *Betty J. Smith*, *supra* note 10.

¹⁵ See *Linda S. Christian*, *supra* note 12.

¹⁶ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁷ 20 C.F.R. § 10.205(a)

ANALYSIS -- ISSUE 2

On February 29, 2012 appellant filed a claim for a traumatic injury allegedly sustained on September 6, 2011. By decision dated March 8, 2012, OWCP denied his claim for continuation of pay as he did not report the injury within 30 days. It further denied appellant's traumatic injury claim on April 12, 2012. As appellant has not established a work-related injury and did not report the incident within 30 days, OWCP properly determined that he was not entitled to continuation of pay.¹⁸

CONCLUSION

The Board finds that appellant has not established that he sustained an injury on September 6, 2011 in the performance of duty or that he was entitled to continuation of pay.

ORDER

IT IS HEREBY ORDERED THAT the April 12 and March 8, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 15, 2013
Washington, DC

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

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

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

¹⁸ *Id.*; see also *J.O.*, Docket No. 12-267 (issued June 11, 2012).