

after a “swam (sic) of wasp came out of the mailbox.” Appellant did not stop work. The employing establishment controverted the claim, indicating that a review of its records revealed that the “2010 incident was coded as nonreportable as he did not even file an injury claim, and the medical he provided in 2012 shows a long[-]standing history of many years of shoulder problems dating back to the 1970s....”

By letter dated January 18, 2013, OWCP requested that appellant submit additional factual and medical information, including a detailed description of his injury and a comprehensive medical report addressing causal relationship.

In an October 19, 2010 statement to the employing establishment, appellant related that when he opened a mailbox to deliver mail a swarm of wasps came out. He stated, “While stepping backward fighting off the wasps I step in a hole and twisted my right knee and fell up against my car banging my right shoulder. I do not wish to see a doctor at this time. But I do reserve the right to see one later if I have a problem.”

Appellant submitted consultation requests dated 2012 and 2013 from physicians requesting evaluations of his chronic neck pain, back pain and arm and shoulder pain. He also submitted clinic notes describing his shoulder treatment in 2012 and 2013. The clinic notes, however, do not contain any reference to the October 19, 2010 work incident. In a report dated October 11, 2012, Dr. Geeta Kandala, a Board-certified physiatrist, discussed appellant’s history of right shoulder pain beginning in the 1970s and noted that he had undergone shoulder surgery in 1999 and 2002. She diagnosed chronic right rotator cuff tendinosis/impingement. On December 6, 2012 Dr. Kandala diagnosed a partial rotator cuff tear and referred him for further diagnostic studies.²

By decision dated February 22, 2013, OWCP denied appellant’s claim on the grounds that the evidence was insufficient to establish that the October 19, 2010 incident occurred at the time, place and in the manner alleged. It further determined that he did not submit medical evidence addressing the relationship between any diagnosed condition and the alleged work incident.

LEGAL PRECEDENT

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 A magnetic resonance imaging (MRI) scan study of the right shoulder performed on November 6, 2012 revealed a recurrent tear of the supraspinatus tendon.

³ 5 U.S.C. § 8101 *et seq.*

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 in determining whether a *prima facie* case has been established.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

Appellant alleged that he sustained an injury to his right shoulder on October 19, 2010. He stated that while delivering mail he fell on his right shoulder after a swarm of wasps flew out of a mailbox. On December 28, 2012 appellant filed a traumatic injury claim. OWCP found that he had not submitted sufficient evidence to establish that the October 19, 2010 incident occurred at the time, place and in the manner alleged.

In a statement dated October 19, 2010, appellant informed the employing establishment that he fell backward into a hole on that date when he tried to fight off wasps that came out of a mailbox. He related that he twisted his right knee and hit his right shoulder. Appellant asserted that he did not want to seek medical treatment at that time. On the claim form, the employing establishment indicated that a review of its records showed that it coded the incident as not reportable. Appellant promptly reported the incident to the employing establishment and there is no contemporaneous factual evidence to establish that the claimed incident did not occur as alleged.¹⁴

The Board finds that the evidence does not contain inconsistencies sufficient to cast serious doubt on appellant's version of the employment incident. 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 or persuasive evidence.¹⁵ The Board thus finds that the evidence is sufficient to establish that the October 19, 2010 incident occurred at the time, place and in the manner alleged.

The remaining issue is whether the medical evidence establishes that appellant sustained an injury causally related to the employment incident, which is generally established by medical evidence.¹⁶ In this case, appellant has not submitted any evidence addressing whether he sustained a right shoulder injury causally related to the October 19, 2010 work incident. On January 18, 2013 OWCP advised him of the type of medical evidence required to establish his claim. Appellant submitted clinic notes dated 2012 and 2013; however, these clinic notes did not address the October 19, 2010 work incident and any causal relationship between a shoulder condition and the accepted employment incident. On October 11, 2012 Dr. Kandala noted that appellant had an extensive history of shoulder pain and diagnosed chronic right rotator cuff tendinosis/impingement. On December 6, 2012 she diagnosed a partial rotator cuff tear. Dr. Kandala, however, did not address causation. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹⁷

¹⁴ See *Thelma Rogers*, 42 ECAB 866 (1991).

¹⁵ *Id.*

¹⁶ See *Louis E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

¹⁷ See *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

Appellant has the burden to submit rationalized medical evidence based on a complete and accurate factual and medical background supporting causal relationship.¹⁸ As he did not provide the medical evidence necessary to substantiate his claim, he has not met his burden of proof.

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.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury on October 19, 2010 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 22, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹⁸ See *T.H.*, 59 ECAB 388 (2008); *James Mack*, 43 ECAB 321 (1991).