

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

_____)	
J.M., Appellant)	
)	
and)	Docket No. 14-1809
)	Issued: December 23, 2014
U.S. POSTAL SERVICE, FORDS POST)	
OFFICE, Fords, NJ, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On August 15, 2014 appellant filed a timely appeal of an August 11, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 established an injury in the performance of duty on June 5, 2014, as alleged.

On appeal appellant states that no correspondence was received in the mail from the Department of Labor regarding his claim.²

¹ 5 U.S.C. § 8101 *et seq.*

² In the application for review before the Board appellant notes July 2, 2014 as OWCP's decision he is appealing. A review of the record reveals that July 2, 2014 was the date OWCP sent appellant a letter regarding the development of his claim. On August 11, 2014 OWCP denied appellant's claim on the grounds that fact of injury had not been established.

FACTUAL HISTORY

On June 20, 2014 appellant, then a 29-year-old city carrier assistant, filed a traumatic injury claim alleging that on June 5, 2014 he landed wrong on his right knee after running and jumping off a sidewalk.

A June 15, 2014 duty status report (Form CA-17) provided work restrictions until August 11, 2014, a diagnosis and history of the injury.³ The diagnosis was a tender and swollen right knee as the result of appellant running, jumping, and landing wrong on his right knee on June 5, 2014.

In a June 20, 2014 authorization for examination and/or treatment (Form CA-16), the employing establishment authorized appellant to have medical treatment for a right knee strain.⁴

In a July 2, 2014 letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the need for additional factual and medical evidence in support of his claimed injury. OWCP requested a detailed description of how the injury occurred and why appellant was running and jumping. Additionally, it advised him to submit a narrative medical report from his attending physician. Appellant was afforded 30 days to submit the requested factual and medical information. The letter was addressed to him at his address of record in Jersey City, NJ. No evidence was received.

In an August 11, 2014 decision, OWCP denied appellant's injury claim as he has failed to provide an adequate statement explaining how the June 5, 2014 incident occurred.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 employment injury.⁶ 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.⁷

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.⁸

³ The signature of the physician is illegible.

⁴ When a CA-16 form is properly executed, it creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See Tracey P. Spillane*, 54 ECAB 608 (2003); 20 C.F.R. § 10.300(c).

⁵ 5 U.S.C. § 8101 *et seq.*

⁶ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁷ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 6.

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.⁹ 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.¹⁰

ANALYSIS

OWCP denied appellant's claim because he failed to explain what happened on June 5, 2014. On his claim form, appellant described the injury as occurring due to his running and jumping off a curb. The mere fact that a medical condition manifests itself or worsens during a period of federal employment raises no inference of causal relationship between the two.¹¹ OWCP requested a statement from appellant explaining how he injured his right knee.

OWCP allowed appellant 30 days to submit a statement describing how the injury occurred. Appellant did not respond. The Board finds that he has failed to establish that he actually experienced an employment incident at the time, place, and in the manner alleged.¹²

The Board will therefore affirm OWCP's August 11, 2014 decision to deny his claim for workers compensation benefits.

On appeal appellant contends that he never received any mail or developmental letter requesting additional factual and medical information from OWCP regarding his claim. Under the mailbox rule, it is presumed, absent evidence to the contrary, that notice mailed to an individual in the ordinary course of business was received by that individual. The presumption arises when the record shows that the notice was properly addressed and mailed.¹³ The copy of OWCP's July 2, 2014 letter contained in the record clearly indicates that it was sent to appellant's address of record, which he provided on his CA-1 form.

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 failed to meet his burden of proof to establish that he sustained an injury in the performance of duty on June 5, 2014, as alleged.

⁹ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

¹⁰ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 6.

¹¹ *V.W.*, 58 ECAB 428 (2007); *Phillip L. Barnes*, 55 ECAB 426 (2004); *Steven R. Piper*, 39 ECAB 312 (1987).

¹² *V.H.*, Docket No. 12-1621 (issued December 21, 2012); *Alvin V. Gadd*, 57 ECAB 172 (2005); *Barbara R. Middleton*, 56 ECAB 634 (2005).

¹³ *See Levi Drew, Jr.*, 52 ECAB 442 (2001); *Kimberly A. Raffle*, 56 ECAB 243 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 11, 2014 is affirmed.

Issued: December 23, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board