

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

R.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Waycross, GA, Employer**

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**Docket No. 13-2118
Issued: March 6, 2014**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 16, 2013 appellant, through his attorney, filed a timely appeal of an August 7, 2013 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on February 7, 2010.

FACTUAL HISTORY

This case has previously been before the Board. The relevant facts are as follows. On February 12, 2010 appellant, then a 38-year-old sales and systems distributor, filed a traumatic injury claim alleging on February 7, 2010 he "passed out and hit [his] head on equipment." He

¹ 5 U.S.C. § 8101 *et seq.*

claimed head trauma. The claim form indicated that appellant's incident occurred during his regular tour of duty at his duty station. On February 8, 2010 a coworker stated that appellant collapsed on the floor on that date. He noted that appellant had a very large knot on the back of his head. The fall was reported to his supervisor and appellant was driven home. The coworker noted that appellant had a large lump on the back of his head.

By decision dated October 18, 2010, OWCP denied appellant's claim finding that the medical evidence was not sufficient to establish that a medical condition was diagnosed in connection with the claimed event.

Appellant informed OWCP on October 27, 2010 that his teeth were dislodged during the fall. Appellant, through his attorney, requested an oral hearing on October 29, 2010. He testified at the oral hearing on March 21, 2011 and stated that he was working outside in 100-degree weather and as he was leaving work walked by a concrete picnic table and fainted. Appellant alleged that he hit a concrete door and that his supervisors found him lying in a pool of blood with his teeth knocked out.

By decision dated June 28, 2011, the hearing representative reviewed the medical evidence and noted variances between appellant's description of the employment events. He concluded that appellant had blacked out and fell at work on February 7, 2010, but that the medical evidence was not sufficient to establish that appellant's work affected an underlying medical condition on February 7, 2010.

In the September 5, 2012 decision, the Board found that as an unexplained fall while appellant was engaged in activities incidental to his employment duties, an injury resulting from the February 7, 2010 fall was compensable.² The Board found that OWCP properly accepted that he had an unexplained fall on February 7, 2010. The Board further found that OWCP had properly concluded that appellant had not established any medical condition as a result of the February 7, 2010 incident.

Following the Board's decision, appellant requested reconsideration on July 25, 2013. In support of his request he submitted a report dated May 15, 2013 from Dr. Milton Peavey, a dentist, who stated that he first examined appellant on August 3, 2010 when he stated that he had been in an accident at the employing establishment. Dr. Peavey noted that he removed a broken tooth and provided appellant with a dental bridge. He stated that he had not previously examined appellant, but found that the injuries were due to his recent fall.

By decision dated August 7, 2013, OWCP denied modification of its prior decisions noting that the evidence regarding appellant's February 7, 2010 fall did not support that he sustained an injury to his teeth or mouth.

² Docket No. 11-1826 (issued September 5, 2012).

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an “employee of the United States” within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

OWCP defines 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.”⁶ 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. First the employee must submit sufficient evidence to establish that he and she actually experienced the employment incident at the time, place and in the manner alleged.⁷ 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.⁸

ANALYSIS

As the Board previously found, appellant has submitted evidence establishing that he sustained an unexplained fall on February 7, 2010. The Board further finds that he had not submitted sufficient factual and medical evidence to establish that the February 7, 2010 fall resulted in an employment injury.

On his claim form appellant reported that he fell on February 7, 2010 and struck the back of his head. His supervisor and a witness confirmed this injury. The facts indicate that appellant fell inside the employing establishment building and perhaps struck his head on equipment. The Board has previously denied his claim as he had failed to submit medical opinion evidence providing a diagnosed head condition as a result of this fall.

At his previous oral hearing and on this request for reconsideration currently before the Board, appellant describes a fall outside in extreme heat and alleges that he sustained damage to

³ 5 U.S.C. §§ 8101-1893.

⁴ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ 20 C.F.R. § 10.5(ee).

⁷ *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *J.Z.*, 58 ECAB 529 (2007).

his teeth and mouth. He submitted a report from Dr. Peavey dated May 15, 2013 noting that he first examined appellant on August 3, 2010 due to an alleged fall at work which allegedly resulted in tooth injuries. The factual evidence and medical evidence in the record regarding his February 7, 2010 fall does not support that he was outside, that he struck a picnic table or that he sustained injuries to his mouth or teeth. Dr. Peavey's report is not sufficiently factually detailed to establish that appellant's dental injuries resulted from the February 7, 2010 employment incident.

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 submitted sufficient factual and medical evidence to establish that he sustained a traumatic injury on February 7, 2010.

ORDER

IT IS HEREBY ORDERED THAT the August 7, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 6, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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