

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

H.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New York, NY, Employer**

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**Docket No. 14-475
Issued: May 23, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 27, 2013 appellant filed a timely appeal from an October 9, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. 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.²

ISSUE

The issue is whether appellant sustained an injury on August 14, 2013 in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted additional evidence subsequent to OWCP's October 9, 2013 decision. The Board has no jurisdiction to review evidence that was not before OWCP at the time of its decision; *see* 20 C.F.R. § 501.2(c)(1). Appellant can submit this evidence to OWCP and request reconsideration under 5 U.S.C. § 8128.

FACTUAL HISTORY

On August 14, 2013 appellant, then a 29-year-old carrier, filed a traumatic injury claim alleging that he experienced groin pain that day after lifting a tub filled with magazines. He stopped work on August 14, 2013.

By letter dated September 3, 2013, OWCP informed appellant that it had paid a limited amount of medical expenses as it appeared that his injury was minor and did not result in time lost from work. It would adjudicate his claim and requested that he submit supporting factual and medical information, including a comprehensive report from his attending physician addressing the causal relationship between his diagnosed condition and his federal employment.

By decision dated October 9, 2013, OWCP denied appellant's claim. It found that he did not submit any medical evidence to establish that he sustained a diagnosed condition causally related to the August 14, 2013 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 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

³ 5 U.S.C. § 8101 *et seq.*

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.*

ANALYSIS

Appellant alleged that he experienced groin pain on August 14, 2013 when he picked up a tub of magazines. The employing establishment did not controvert the claim and OWCP accepted that the incident occurred at the time, place and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that he sustained an injury as a result of this incident.

The Board finds that appellant has not established that the August 14, 2013 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.⁹

On September 3, 2013 OWCP advised appellant of the medical evidence required to establish his claim. He did not, however, respond to OWCP's request for additional evidence within the allotted time. As appellant did not provide the medical evidence necessary to substantiate his claim, he has not met his burden of proof.¹⁰

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 August 14, 2013 in the performance of duty.

⁹ *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

¹⁰ *See Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Donald W. Wenzel*, 56 ECAB 390 (2005).

ORDER

IT IS HEREBY ORDERED THAT the October 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 23, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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