United States Department of Labor
Employees' Compensation Appeals Board

A.M., Appellant	)	
and	)	
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Miami, FL, Employer	)	**Docket No. 14-1767** **Issued: August 25, 2015**

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 14, 2014 appellant filed a timely appeal from a May 2, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 met his burden of proof to establish a traumatic injury in the performance of duty on March 12, 2014.

[1] 5 U.S.C. §§ 8101-8193.

[2] The Board notes that appellant submitted evidence subsequent to OWCP's May 2, 2014 decision and with his appeal to the Board. The Board cannot consider this evidence as its review of the case is limited to the evidence of record which was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c)(1); *P.W.*, Docket No. 12-1262 (issued December 5, 2012). Appellant may submit this evidence to OWCP with a valid reconsideration request.

FACTUAL HISTORY

On March 16, 2014 appellant, then a 54-year-old transportation security officer, filed a traumatic injury claim alleging that on March 12, 2014 he injured the left side of his left knee when he turned to step off a mat at work. The employing establishment controverted the claim.

By letter dated March 20, 2014, OWCP informed appellant of the type of evidence needed to support his claim. This was to include an explanation of the circumstances of the claimed cause of injury and a medical report from a physician supported by a medical explanation as to how the reported work incident caused or aggravated a medical condition.

In a March 17, 2014 medical report, Dr. Seth A. Feldman, a Board-certified osteopath specializing in family medicine, noted that appellant reported a history that he felt a sharp pain in his left knee when he twisted his knee stepping off a mat at work on March 12, 2014. Tenderness and effusion were present on examination, and an x-ray demonstrated degenerative changes. Dr. Feldman diagnosed a knee sprain/strain, recommended medication and physical therapy, and advised that appellant could perform regular work. He reiterated this assessment on March 20 and 27 and April 3 and 10, 2014. On April 15, 2014 Dr. Hugh Conor McLoughlin, a family practitioner and an associate of Dr. Feldman, advised that appellant had reached maximum medical improvement and that his left knee strain had resolved.

By decision dated May 2, 2014, OWCP denied the claim, finding that the evidence submitted was insufficient to establish that the claimed event occurred as described, because it did not receive a reply from appellant clarifying what he was claiming as a work injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 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 and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves a traumatic injury or an occupational disease, an employee must satisfy this burden of proof.[3]

OWCP regulations at 20 C.F.R. § 10.5(ee) define 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.[4] 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. 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

[3] *Gary J. Watling*, 52 ECAB 278 (2001).

[4] 20 C.F.R. § 10.5(ee) (1999, 2011); *Ellen L. Noble*, 55 ECAB 530 (2004).

disability and/or condition for which compensation is claimed. 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.[5]

An employee's statement 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.[6] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his or her burden in 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. Circumstances such 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 statement in determining whether a *prima facie* case has been established.[7]

Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[8]

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish an employment-related left knee injury on March 12, 2014 because the record does not support his allegation that a specific employment event occurred which caused an injury. The employing establishment controverted the claim. By letter dated March 20, 2014, OWCP informed appellant of the type of evidence needed to support his claim that he injured his left knee at work on March 12, 2014. This was to include an explanation of the circumstances of the claimed cause of injury and a medical report from a physician supported by a medical explanation as to how the reported work incident caused or aggravated a medical condition. Appellant did not submit any description of the employment injury and in response merely submitted medical evidence. He did not describe the specific circumstances of the injury as requested by OWCP and consequently did not provide any requested confirmation as to how the claimed injury occurred.

The Board therefore concludes that appellant did not establish a traumatic injury in the performance of duty on March 12, 2014 because he did not submit sufficient evidence to establish that he actually experienced an employment incident that caused his left knee condition.

[5] *Supra* note 3.

[6] *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

[7] *Betty J. Smith*, 54 ECAB 174 (2002).

[8] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

Where a claimant does not establish an employment incident alleged to have caused his or her injury, it is not necessary to consider the medical evidence.[9]

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 did not establish that he sustained an employment-related injury on March 12, 2014.

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 25, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[9] *S.P.*, 59 ECAB 184 (2007).