

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

G.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
City of Industry, CA, Employer**

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**Docket No. 15-1003
Issued: August 11, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 30, 2015 appellant filed a timely appeal from a November 10, 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 the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained a left leg and upper thigh injury in the performance of duty.

FACTUAL HISTORY

On August 8, 2014 appellant, then a 44-year-old letter carrier, filed a traumatic injury claim, alleging that on July 25, 2014 while on his mail route he sustained an injury to his left leg,

¹ 5 U.S.C. §§ 8101-8193.

upper quad, and thigh when his left leg locked. The employing establishment first received notice of the claimed injury on August 8, 2014. Appellant stopped work on July 25, 2014.

Appellant submitted an undated narrative statement and noted that on July 25, 2014 while he was on his scheduled mail route, his left leg locked and gave out. He reported calling Laura Huerta, his supervisor, and informing her that he injured his leg but he would try to finish his mail route. Appellant attempted to finish his mail route, but he was unable to walk and thereafter contacted Postmaster David Muse. When he arrived at the employing establishment he was unable to unload his vehicle, so Mr. Muse and a coworker assisted him. Appellant submitted a return to work slip from Dr. Tracy Polanco, a Board-certified family practitioner, dated July 30, 2014, who treated him and advised that he was medically excused from work from July 25 to August 18, 2014 for evaluation due to a work injury. Dr. Polanco diagnosed a left quadriceps injury, rule out tear.

Appellant submitted a Form CA-7 claim for compensation for total disability from September 9 to 19, 2014. He received continuation of pay from July 26 to September 8, 2014. The employing establishment submitted a work and leave break down from September 6 to 19, 2014.

Appellant submitted a report from a physician assistant dated September 25, 2014, who noted that appellant presented with left hip pain. He reported that on July 25, 2014 he was delivering mail on his route when he noticed a sudden increased pain in his left hip. Appellant noted symptoms of pain radiating into his joint, swelling, weakness, stiffness, and decreased range of motion. The physician assistant noted examination findings for the left lower extremity of tenderness over the greater trochanter, full range of motion in all planes without crepitus, intact joint stability, strength was intact except on abduction, no tenderness, swelling, or deformities of the thigh, and sensation was intact. He noted x-rays of the pelvis and lateral right hip performed in August revealed no fractures or arthritis. The physician assistant diagnosed left trochanteric bursitis and tendinitis of the hip and pelvis area and opined that the left hip pain was directly related to his knee problems and was a common compensatory consequence to an altered gait. Thus it should not be considered a new workers' compensation injury, but related to appellant's prior right knee issues. The physician assistant appellant was temporarily totally disabled.

By letter dated October 8, 2014, OWCP advised appellant that his claim originally appeared to be a minor injury and that a limited amount of medical expenses were administratively approved without formally considering the merits of the claim. Because there was a claim for wage loss, his claim would be formally adjudicated. OWCP advised that the evidence was insufficient to establish that he actually experienced the incident alleged to have caused the injury as he did not describe the specific work activities that he performed on July 25, 2014 which caused the claimed injury. OWCP asked appellant to provide a detailed description as to how his injury occurred.²

² On October 8, 2014 appellant advised OWCP that his hip condition was related to his knee injury in another claim, number xxxxxx262. OWCP indicated that it would expand the other claim to include a consequential hip injury. Claim number xxxxxx262 is not before the Board on the present appeal.

Appellant submitted a statement dated October 23, 2014 and elaborated that on July 25, 2014 he arrived in his vehicle to deliver mail on his scheduled route, proceeded to the back of his vehicle, and loaded his mailbag which weighed about 35 pounds. He noted stretching before and during his mail route due to his current knee condition. On this particular day, appellant felt the need to do more stretching because he felt more discomfort than usual and then proceeded from his vehicle to start his route. He noted that, as he reached 2101 Merle Drive, his left leg locked and gave out. Appellant did not fall, but he stopped, removed his mailbag, and started stretching, thinking he may have pulled his hamstring. He noted that during the stretching he felt a different kind of pain, which was constant and sharp, near his left hip area. Appellant reported trying to apply his weight to both legs to return to his vehicle but he was unable to do so and hopped back to his vehicle on his right leg. He noted experiencing intense pain, and called his supervisor to report his current situation, and was instructed to return to the office. Appellant associated his pain to his left knee condition. He opined that there was no traumatic event that occurred, “but rather a scientifically-based medical opinion and not speculation due to compensation consequences associated to my prolong history due to two surgeries to my left knee.”

Appellant also provided a copy of the previously submitted September 25, 2014 physician assistant’s report which had also been signed by Dr. Peter B. Hanson, a Board-certified orthopedic surgeon. Also submitted was a September 25, 2014 disability certificate from Dr. Hanson finding appellant totally disabled until October 9, 2014.

In a decision dated November 10, 2014, OWCP denied appellant’s claim, finding that the evidence did not support that the injury or events occurred as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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 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 is causally related to the employment injury.”³ 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.⁴

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.⁵ In some traumatic injury cases this

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁵ *Supra* note 3.

component can be established by an employee's uncontroverted statement on the Form CA-1.⁶ An alleged work incident 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 statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁷ A consistent history of the injury as reported on medical reports, to the claimant's supervisor, and on the notice of injury can also be evidence of the occurrence of the incident.⁸ 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 sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.⁹ Although 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,¹⁰ an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.¹¹

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.¹²

ANALYSIS

In the present case, appellant, a letter carrier, filed a traumatic injury claim, alleging that on July 25, 2014 while on his mail route he injured his left leg, upper thigh, and quadriceps when his left leg locked and gave out. However, the Board notes that there are inconsistencies in the evidence which cast serious doubt upon the validity of the claim. The Board finds that the claimed employment incident did not occur as alleged.

Appellant submitted differing statements regarding how his left leg and thigh injury occurred. He initially stated on the CA-1 form signed on August 8, 2014, that on July 25, 2014 he injured his left leg when delivering mail. In a statement dated October 23, 2014, appellant noted his routine was to stretch before and during his route pursuant to his doctor's recommendation due to his knee condition. He indicated that on this particular day he felt the need to do more stretching because he felt more discomfort than usual and thought he may have

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁸ *Id.* at 255-256.

⁹ *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

¹⁰ *Robert A. Gregory*, 40 ECAB 478 (1989).

¹¹ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

¹² *See Richard A. Weiss*, 47 ECAB 182 (1995); *John M. Tornello*, 35 ECAB 234 (1983).

pulled a hamstring. Appellant noted that during the stretching he felt a different kind of pain which was constant and sharp near his left hip area, and he was unable to put any pressure on his left leg. He associated his pain to his left knee condition. Appellant opined that there was no traumatic event that occurred, “but rather a scientifically-based medical opinion and not speculation due to compensation consequences associated to my prolong history due to two surgeries to my left knee.”

Similarly, the medical evidence failed to provide a clear history of a new injury. In a September 25, 2014 report, Dr. Hanson noted that appellant presented with left hip pain and reported that on July 25, 2014 he was walking on his mail route delivering mail when he noticed sudden, increased pain in his left hip. He opined that the left hip pain was directly related to his knee problems and was a common consequence to an altered gait and should not be considered a new workers’ compensation injury, but related to appellant’s prior right knee issues.

There also are no contemporaneous statements from persons present at the employing establishment supporting that the incident occurred as alleged. While 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, the employee’s statement must be consistent with the surrounding facts and circumstances and his subsequent course of action. The medical reports do not relate a consistent history of injury as described by appellant. Appellant also has not provided a clarifying explanation between his initial statement when he indicated that he had a new traumatic injury and his October 23, 2014 statement in which he stated that there was no new traumatic event and that his condition was a consequence of another injury.¹³

For these reasons, the Board finds that appellant has not established that the claimed traumatic incident occurred as alleged. As appellant has not established that the July 25, 2014 incident occurred as alleged, it is not necessary for the Board to consider the medical evidence regarding causal relationship.¹⁴ Consequently, appellant has not met his burden of proof to establish his claim.

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 failed to meet his burden of proof to establish that he sustained a left leg and upper thigh injury in the performance of duty.

¹³ See *supra* note 2. This decision does not preclude appellant from pursuing matters under claim number xxxxxx262.

¹⁴ See *S.P.*, 59 ECAB 184 (2007).

ORDER

IT IS HEREBY ORDERED THAT the November 10, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 11, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board