

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On June 23, 2014 appellant, then a 35-year-old corrections officer, filed an occupational disease claim alleging that he sustained a right foot injury in the performance of duty. He alleged that he slipped while walking up the wet staircase of an elevator shaft. Appellant noted that he had swelling and throbbing right foot pain. He stated that he became aware of his condition on June 20, 2014 and became aware of its relationship to his employment on June 21, 2014.

By letter dated August 18, 2014, OWCP notified appellant that the evidence was insufficient to establish his claim. It advised him to complete a questionnaire establishing the factual element of his claim and advised him of the type of medical evidence needed to establish the claim. OWCP also requested that appellant clarify if he was claiming a traumatic injury or an occupational disease.

By decision dated November 7, 2014, OWCP denied appellant's claim because the evidence was insufficient to establish that the events occurred as alleged. It noted that he had not described the employment activities that he alleged caused or contributed to his conditions and did not clarify what type of injury he was claiming. OWCP also noted that no medical evidence was submitted.

LEGAL PRECEDENT ISSUE 1

An employee seeking benefits under FECA has the burden 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 timely filed within the applicable time limitation, that an injury was sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions for which compensation is claimed are 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

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which

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

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

An employee has the burden of establishing 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 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.⁷ 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 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 case has been established.⁸

ANALYSIS

Appellant alleged that he slipped on a wet staircase causing a right foot injury. In an August 18, 2014 letter, OWCP advised him to submit additional factual and medical evidence to establish his claim. It requested that appellant describe the employment-related activities which he believed contributed to his condition, how often he performed such activities, and for how long they were performed. Appellant provided no response within the time allotted. The Board finds that he provided insufficient evidence to identify employment factors alleged to have caused or contributed to the presence or occurrence of the claimed occupational disease.

A statement describing the particular employment activities that caused or contributed to the claimed condition is crucial to appellant's claim. As noted, appellant's burden of proof includes the submission of a factual statement including the time, place, and manner of his injury. His occupational disease claim asserts that his right foot condition began when he slipped on a wet staircase. The Board notes that this appears to implicate a specific incident, or traumatic event, as the cause of appellant's condition rather than work factors that occurred over more than one work shift. It is unclear if appellant is actually claiming a traumatic injury instead of an occupational disease.⁹ This is insufficient to identify a work factor as the cause of his claimed condition. Appellant also did not clearly identify the date of the claimed slip in the stairwell or exactly where the stairwell in question is located. As he did not provide a factual

⁵ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁶ *William Sircovitch*, 38 ECAB 756, 761 (1987).

⁷ *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

⁸ *Betty J. Smith*, 54 ECAB 174 (2002).

⁹ Under FECA, a traumatic injury is defined 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. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

statement describing in detail the events and date of the events that caused the claimed injury, the Board finds that he has not met his burden of proof. Thus, the Board finds that appellant has not met his burden of proof.

On appeal, appellant asserts that he did not respond to OWCP's request because he was not receiving his mail and because he was very busy and bedridden around the time of his claimed injury. As noted, part of his burden of proof includes the submission of a factual statement describing the claimed injury. Here, OWCP asked appellant to fully describe the circumstances of his claimed condition, but he did not respond within the time allotted. Although appellant asserts that he was not receiving his mail, the record indicates that OWCP's August 18, 2014 letter requesting additional information was sent to his address of record. Absent evidence to the contrary, a letter mailed in the ordinary course of business is presumed to have been received by the intended recipient. This presumption is commonly referred to as the mailbox rule. It arises when the record reflects that the notice was properly addressed and duly mailed.¹⁰ The record contains no evidence to rebut the presumption that appellant received OWCP's August 18, 2014 letter in due course. The Board also notes that he submitted new evidence to the Board with his appeal. However, the Board does not have jurisdiction to review new evidence for the first time on appeal.¹¹

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 appellant has not met his burden of proof to establish that he sustained an occupational disease in the performance of duty.

¹⁰ See *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

¹¹ See 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 2015
Washington, DC

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

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

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