

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

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A.M., Appellant )

and )

DEPARTMENT OF THE AIR FORCE, )  
KIRTLAND AIR FORCE BASE, )  
Albuquerque, NM, Employer )

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**Docket No. 15-249**  
**Issued: March 24, 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  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 12, 2014 appellant filed a timely appeal from the May 22, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish the April 26, 2011 work injury occurred as alleged.

**FACTUAL HISTORY**

On March 26, 2014 appellant, a 47-year-old firefighter (hazardous materials technician), or someone acting on his behalf, filed a traumatic injury claim alleging that he injured his right thumb in the performance of duty on April 26, 2011: "Individual loading supply hose onto the P-19 and P-23 during live fire training for Farmington Fire Department. Individual

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

hyperextended right thumb.” The incident took place at the training fire pit area south of building 638 at 2:00 p.m.

A supervisor completed a notification of injury form on April 27, 2011 indicating that appellant hyperextended his right thumb while loading a supply hose the previous day.

Dr. Matthew W. Patton, a Board-certified hand surgeon, saw appellant for a right thumb problem on April 20, 2011. Appellant related that he suffered some pain in the basal joint of the right thumb for the last month and a half or so. “His pain began insidiously without a history of trauma.” Dr. Patton diagnosed right thumb basal joint arthritis.

Dr. Patton saw appellant again on May 31, 2011. He noted continued pain in the basal joint of the right thumb. He noted that appellant tried wearing a splint, but it was not effective. Dr. Patton treated appellant with an injection. He saw appellant about nine months later and provided another injection. Dr. Patton repeated the procedure on August 2, 2013 and February 10, 2014.

Appellant notified OWCP on May 6, 2014 that the traumatic injury actually occurred in 2008. He told his supervisor at that time, but no paperwork was completed. After that traumatic injury, appellant began having pain in his thumb. He received cortisone shots every four to six weeks. Appellant advised that work activities aggravated his thumb, which he had to ice to reduce the swelling. An orthopedic doctor told appellant that he had developed arthritis over time as a result of the traumatic injury. “Claimant [stated] he was informed incorrectly by his agency what date to put down for his [traumatic injury]. The agency entered 2011 as the [date of injury].”

Appellant advised OWCP in writing that he reported the injury to his supervisor in November 2008. He submitted a claim because the condition of his thumb was getting worse. Appellant noted that he hyperextended his right thumb during search training drills at Fire Station 2. He described the symptoms he experienced in 2008. Appellant added: “I have not sustained any other injury to my right thumb since 11/2008.”

In a decision dated May 22, 2014, OWCP denied appellant’s traumatic injury claim. It found that the evidence was not sufficient to establish that the event occurred as described. The claim form indicated the date of injury as April 26, 2011, but appellant’s statement indicated that the actual date of injury was in November 2008. “Due to the discrepancy in the date you sustained an injury, we are unable to establish fact of injury, factual.” OWCP added that the medical evidence did not support the element of causal relationship.

Appellant disagrees with OWCP’s decision. He feels that he has submitted all the documentation requested to prove the extent of his injury. Appellant explains that he has never been trained in this matter. He feels that all paperwork was sent to the proper people, and if any forms or paperwork was not received, it was due to management.

### **LEGAL PRECEDENT**

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.<sup>2</sup> An employee seeking benefits under

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<sup>2</sup> 5 U.S.C. § 8102(a).

FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place, and in the manner alleged. He or she must also establish that such event, incident, or exposure caused an injury.<sup>3</sup>

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>4</sup>

### ANALYSIS

It appears that someone filed a traumatic injury claim on appellant's behalf. Appellant did not sign the typed claim form, and the description of the injury refers to him in the third person as "the individual." Further, he advised it was the employing establishment that entered the date of injury.

Although the claim form indicated that an injury occurred on April 26, 2011, appellant later explained that the injury actually occurred in November 2008. He clarified that he injured his right thumb during search training drills at Fire Station 2, and that he had not sustained another injury to his right thumb since November 2008. Appellant submitted the claim form because the condition of his thumb was getting worse.

Appellant has thereby given good reason to question whether the April 26, 2011 injury occurred as alleged on the claim form. The medical record shows that he sought medical attention for his right thumb problem prior to April 26, 2011. When he saw Dr. Patton, the attending hand surgeon, on April 20, 2011, he related that he suffered some pain in the basal joint of the right thumb for the last month and a half or so. When appellant saw Dr. Patton on May 31, 2011, he did not mention an injury while loading a supply hose at work. It is reasonable to expect a patient to inform his doctor how an injury occurred. None of Dr. Patton's reports note a work injury occurring on April 26, 2011.

Given the statements from appellant that conflict with the submitted claim form, and given the lack of any reference in the medical record to an injury occurring at work on April 26, 2011, the Board finds that appellant has not met his burden to establish that the April 26, 2011 work injury occurred as alleged. The Board will therefore affirm OWCP's May 22, 2014 decision denying the traumatic injury claim that was submitted.

OWCP did not deny appellant's claim because he did not submit all the documentation requested to prove the extent of his injury. It denied the traumatic injury claim that was

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<sup>3</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>4</sup> *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984). See also *George W. Glavis*, 5 ECAB 363 (1953).

submitted because it appeared from the evidence that the date of injury was not actually April 26, 2011. The factual evidence did not support the claim alleged.<sup>5</sup>

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 met his burden to establish that the April 26, 2011 work injury occurred as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 22, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 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

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<sup>5</sup> OWCP also found that the medical evidence did not support the element of causal relationship, but appellant must first establish that he experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged.