United States Department of Labor
Employees' Compensation Appeals Board

H.L., Appellant	)	
and	)	**Docket No. 15-1386**
	)	**Issued: November 13, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Columbus, OH, Employer	)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 8, 2015 appellant filed a timely appeal of a March 19, 2015 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on January 6, 2015.

FACTUAL HISTORY

On January 28, 2015 appellant, then a 46-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 6, 2015, due to the stress he was under, he

[1] 5 U.S.C. § 8101 *et seq.*

could not think clearly because of a conflict with an employee. He indicated that his back, knee, and foot were numb and that he pushed a gurney of parcels to the back and felt a pain in his right hip while in the performance of duty. Appellant stopped work on January 6, 2015. A supervisor with the employing establishment indicated that he did not have any actual knowledge of the claimed accident.[2]

In a February 2, 2015 statement, Michael B. Alter, a health and resource management specialist from the employing establishment, controverted the claim. He indicated that appellant was working modified duty as a lobby assistant. Mr. Alter provided a copy of the modified job offer, which was given to appellant on December 22, 2014. He noted that the start date was December 27, 2014. Mr. Alter related that it was his belief that appellant did not want to work as he did not start until three days after the reporting date. Furthermore, when he reported, appellant claimed that he needed a "special chair." Mr. Alter confirmed that his restrictions were accommodated. However, appellant claimed that was not enough and the stress of his lobby position caused him to hurt his hip while pushing a gurney of parcels. Mr. Alter noted that the employing establishment did not agree that appellant was entitled to receive any benefits for this claim.

A copy of a February 3, 2015 letter from Mr. Alter to appellant was also provided. In that letter, Mr. Alter informed appellant that he would be assigned to assist him with his claim and the return to work process.

By letter dated February 10, 2015, OWCP advised appellant that additional factual and medical evidence was needed. It noted that the evidence was insufficient to establish that he actually experienced the incident or employment factor alleged to have caused the injury. OWCP also explained that a physician's opinion was crucial to his claim and allotted appellant 30 days within which to submit the requested information. No response was received.

By decision dated March 19, 2015, OWCP denied appellant's claim. It found that the claim was denied because the factual component of fact of injury had not been met.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[4] and that an injury was sustained in the performance of duty.[5] These

[2] The record reflects that appellant also filed an occupational disease claim (Form CA-2) on January 6, 2015 for a physical condition and a stress condition. Appellant has filed a separate appeal regarding this claim, Docket No. 15-1733, which is proceeding to adjudication separately from the present matter.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

> 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. 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.[7] An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his or her subsequent course of action. 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 cast doubt on an employee's statements in determining whether he or she has established a *prima facie* case.[8] However, 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.[9]

ANALYSIS

Appellant alleged that on January 6, 2015 his back, knee, and foot were numb and that he pushed a gurney of parcels to the back of the facility and felt a pain in the right hip in the performance of duty.

OWCP denied his claim, finding that he did not demonstrate that the specific event occurred at the time, place, and in the manner described. The initial question presented is whether appellant has established that the January 6, 2015 employment incident occurred as alleged. The Board finds that appellant has not established the occurrence of the alleged January 6, 2015 employment incident.

In this case, the employing establishment controverted the claim and provided a February 2, 2015 statement from Mr. Alter. Mr. Alter indicated that appellant was working a modified-duty position as a lobby assistant. He explained that the modified job offer was provided to appellant on December 22, 2014. However, appellant did not start until December 27, 2014. Mr. Alter explained that it was the employing establishment's belief that appellant did not want to work as he did not start until three days after the reporting date. He indicated that appellant requested a "special chair" and confirmed that his restrictions were

[6] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *Charles B. Ward*, 38 ECAB 667 (1987).

[8] *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[9] *Thelma S. Buffington*, 34 ECAB 104 (1982).

accommodated. Mr. Alter advised that appellant claimed that was not enough and the stress of his lobby position caused him to hurt his hip while pushing a gurney of parcels. He advised that the employing establishment did not agree that appellant was entitled to receive any benefits.

By letter dated February 10, 2015, OWCP advised appellant that additional factual and medical evidence was needed and allotted him 30 days within which to submit the requested information. However, no response was received. As appellant did not provide further details, he has not established that a specific traumatic incident occurred at the time, place, and in the manner alleged. As appellant has not established that the claimed incident occurred as alleged, it is not necessary to consider the medical evidence with respect to causal relationship.[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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a traumatic injury in the performance of duty on January 6, 2015.

[10] *S.P.*, 59 ECAB 184 (2007) (where a claimant did not establish an employment incident alleged to have caused his or her injury, it was not necessary to consider any medical evidence).

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 13, 2015
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board