

United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant

and

DEPARTMENT OF THE AIR FORCE,
ROBINS AIR FORCE BASE, GA, Employer

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Docket No. 15-0949
Issued: October 8, 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 March 18, 2015 appellant filed a timely appeal of a November 13, 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 this case.²

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury causally related to a September 18, 2014 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted new evidence with his appeal to the Board and that OWCP received additional evidence following the November 13, 2014 decision. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

On appeal appellant argues that he sustained an employment-related injury.

FACTUAL HISTORY

On September 18, 2014 appellant, then a 28-year-old sheet metal mechanic, filed a traumatic injury claim alleging that on that day he received an electrical shock he claims occurred from a wing stand “while preparing for downjacking” which went from one hand to the other. He claimed no tissue damage occurred.

By letter dated October 2, 2014, OWCP noted that no documentation had been received with appellant’s claim form. It noted that there was no medical evidence with a diagnosis attributed to the alleged incident. OWCP advised appellant as to the medical and factual evidence required to support his claim and gave him 30 days to provide this information.

In response to OWCP’s letter, appellant submitted an October 10, 2014 notification of personnel action (Form SF-50) and an October 14, 2014 report of work status form. The October 10, 2014 form noted that appellant stopped work on September 18, 2014 and returned to work on September 19, 2014.

By decision dated November 13, 2014, OWCP denied appellant’s claim. It found that the incident occurred as alleged, but that fact of injury was not established as no medical evidence had been submitted.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing the essential elements of his 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; that an injury was sustained while 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

OWCP regulations 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.⁶ To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁷ First, the employee must submit sufficient evidence to establish that he actually experienced the

³ 5 U.S.C. § 8101 *et seq.*

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁷ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

employment incident at the time, place, and in the manner alleged.⁸ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹

ANALYSIS

OWCP has accepted that the employment incident of September 18, 2014 occurred at the time, place, and in the manner alleged. The issue is whether appellant sustained an injury as a result of the employment incident. The Board finds that he has not established an injury in connection with the September 18, 2014 employment incident.

In an October 2, 2014 letter, OWCP notified appellant of the deficiencies of his claim and requested additional factual and medical evidence. It afforded him 30 days to submit additional evidence and respond to its inquiries. The only evidence appellant submitted in response was an SF-50 form and report of work status. Appellant did not submit any medical evidence showing treatment or a diagnosis of a condition due to the accepted September 18, 2014 incident was submitted. OWCP advised him in the October 2, 2014 letter that medical evidence was required to support his claim. Appellant did not submit the evidence requested by OWCP within the allotted time. As appellant has not submitted any medical evidence to support his allegation that he sustained an injury related to the September 18, 2014 employment incident, he has failed to meet his burden of proof.¹⁰

On appeal appellant argues that his claim should be accepted as the injury was employment related, his supervisor was informed of the incident, and he was told to be “checked out.” OWCP denied appellant’s claim as he failed to submit any medical evidence. It is appellant’s burden to submit the evidence required including a medical opinion containing a diagnosis causally related to the employment incident. Appellant did not satisfy his burden of proof.

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 of proof to establish an injury causally related to a September 18, 2014 employment incident.

⁸ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁹ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

¹⁰ *See Donald W. Wenzel*, 56 ECAB 390 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 13, 2014 is affirmed.

Issued: October 8, 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