



On appeal appellant contends that the evidence is sufficient to establish his claim.

### **FACTUAL HISTORY**

On February 18, 2015 appellant, then a 41-year-old medical support assistant, filed a traumatic injury claim (Form CA-1) alleging that on February 5, 2015 he sustained a back injury when “during a work assignment a veteran assault by grabbing from the back and tried to throw from out in front of door.” The incident occurred at the Virginia Beach Chesapeake Community-Based Outpatient Clinic (CBOC). Appellant stopped work on February 5, 2015. On the back of the form the employing establishment checked a box marked “yes” to the question of whether appellant was injured in the performance of duty.

In a progress note/fitness-for-duty report dated May 28, 2015, Dr. John E. Wing, Board-certified in internal medicine, wrote that appellant was disabled from work for the period May 28 to August 5, 2015 due to injury.

Appellant filed claims for wage-loss compensation (Form CA-7) for the periods March 23 to April 6, 2015 and April 23 to May 7, 2015.

By letter dated June 10, 2015, OWCP informed appellant that when his claim was received it had been considered to be a minor injury therefore the merits of the claim were not adjudicated.<sup>3</sup> It informed him that his claim was being reopened for review on the merits due to receipt of claims for wage-loss compensation. OWCP further informed appellant that the evidence received failed to establish that the February 5, 2015 injury occurred as alleged, that he was in the performance of duty at the time of injury, and that the medical evidence failed to provide a firm medical diagnosis with an opinion that the injury was caused by the work incident. OWCP requested additional factual and medical evidence. It requested appellant complete a questionnaire in order to substantiate the factual basis of his claim and submit a medical report from his attending physician including a diagnosis, history of the injury, and a physician’s opinion on causal relationship supported by medical rationale. The questionnaire requested that he explain the circumstances surrounding the incident, including the location of the injury, what activities he was engaged in at the time of the injury, how the injury occurred, a statement regarding who grabbed whom, the location of each person involved, a description of the injury, and statements from any persons who witnessed the injury or had immediate knowledge of it. Appellant was afforded 30 days to provide the requested information.

In response to OWCP’s June 10, 2015 request for additional evidence, the following medical evidence was received.

A February 6, 2015 lumbar x-ray, interpreted by Dr. Lyn Bergren, a Board-certified diagnostic radiologist, revealed no significant disc disease or spinal canal narrowing. The report indicated that the diagnostic test was performed because appellant experienced back pain following an altercation with a patient.

---

<sup>3</sup> By letter dated June 9, 2015, OWCP informed appellant that it had combined OWCP File Nos. xxxxxx916 and xxxxxx290 and he was to use the latter number on future correspondence. These two file numbers are duplicates.

Dr. Wing, in a March 3, 2015 progress note, related that appellant was seen for a follow-up visit for severe back pain. He reported that approximately a month previously appellant had injured his back following a patient assault as he was trying to restrain a patient. In an attached disability note, Dr. Wing indicated that appellant was disabled from work due to injury.

In a March 31, 2015 progress note, Dr. Wing reported that appellant was seen for continuing low back pain, which had not improved since the last visit. Appellant related that he continued to have severe back pain while walking, stretching in sitting, and bending. Dr. Wing reviewed a magnetic resonance imaging (MRI) scan, which revealed normal findings. In an attached disability note, he indicated that appellant continued to be disabled from work due to injury.

In a May 28, 2015 progress note, Dr. Wing related that appellant was seen for low back pain due to a February work injury. He reported that appellant continued to have difficulty with any back movement and bending. A physical examination revealed paraspinal muscle tenderness and low back pain. Dr. Wing reviewed a lumbar MRI scan, which revealed normal findings and recommended a thoracic MRI scan be performed. He continued to opine that appellant was currently disabled due to his injury.

A June 1, 2015 thoracic x-ray was interpreted by Dr. Kermit B. Ashby, a nuclear radiologist, as showing no acute abnormality.

By decision dated August 18, 2015, OWCP denied appellant's claim finding that the evidence of record failed to establish an injury in the performance of duty. OWCP found that he had failed to establish fact of injury because he had not responded to the request for additional factual information surrounding the incident.

On August 26, 2015 appellant requested reconsideration and submitted additional evidence.

In an August 11, 2015 report, Dr. Wing provided a history of the injury as reported by appellant. Appellant informed Dr. Wing that on February 5, 2015 he was attacked by a patient whom he subsequently had to restrain. Dr. Wing noted that appellant injured his back while in the process of trying to physically restrain the patient. Appellant was seen on March 3, 2015 for complaints of severe low back pain radiating into the lower extremities. Dr. Wing opined that the February 5, 2015 incident aggravated appellant's preexisting myofascial syndrome. He noted that a March 6, 2015 lumbar MRI scan contained unremarkable findings with no evidence of disc herniations, and a thoracic MRI scan revealed a small T5-6 disc herniation. Appellant continued to have low back pain complaints when he was seen on March 31, May 28, and July 30, 2015.

In an October 1, 2015 disability note, Dr. Wing checked a box showing his opinion that appellant was unable to work at this time.

By decision dated December 10, 2015, OWCP denied modification. It found that appellant had not responded to the request for additional factual information surrounding the incident. OWCP noted that while Dr. Wing had provided a history of the February 5, 2015 incident, there was no personal statement from appellant explaining how the injury occurred.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish 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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged.<sup>8</sup> 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.<sup>9</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.<sup>10</sup> 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 doubt on an employee's statements.<sup>11</sup> However, an employee's statement regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong or persuasive evidence.<sup>12</sup>

## ANALYSIS

The Board finds that appellant failed to establish an injury in the performance of duty on February 5, 2015, as alleged.

---

<sup>4</sup> *Supra* note 1.

<sup>5</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>6</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 5.

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

<sup>9</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 5.

<sup>10</sup> *See Betty J. Smith*, 54 ECAB 174 (2002).

<sup>11</sup> *Linda S. Christian*, 46 ECAB 598 (1995).

<sup>12</sup> *Gregory J. Reser*, 57 ECAB 277 (2005).

Appellant alleged that on February 5, 2015 he sustained a back injury during a work assignment when “a veteran assault by grabbing from the back and tried to throw from out in front of door.” He has not provided sufficient detail necessary to establish that the incident occurred in the manner alleged, and in the performance of duty.<sup>13</sup> Appellant’s description fails to adequately detail the alleged work incident, as required in a traumatic injury claim.<sup>14</sup> Appellant’s description is vague. It does not relate with specificity the circumstances of the injury, or identify the actual cause.<sup>15</sup> While appellant vaguely mentioned being grabbed from the back, he did not identify which body part was grabbed. Furthermore his statement “tried to throw from out in front of door” is so vague that it is incomprehensible. Appellant did not identify the patient in question and he did not precisely state what the patient did to cause an injury.<sup>16</sup>

While Dr. Wing provided additional details of how the injury allegedly occurred in his August 1, 2015 report, it remains unclear as to whether his report was based on an accurate history of injury. The Board is unable to consider the accuracy of Dr. Wing’s recitation of the history of injury as appellant has not provided details as to how the injury occurred. Thus, appellant did not meet his burden of proof. Given that appellant did not establish an employment incident in the performance of duty, further consideration of the medical evidence is unnecessary.<sup>17</sup>

On appeal appellant argues that he provided a detailed description of how the injury occurred to the employing establishment and that it submitted an incomplete claim form. The Board’s jurisdiction is limited to review of the evidence contained in the record and reviewed by OWCP.<sup>18</sup> OWCP advised appellant in a June 10, 2015 letter that the evidence was insufficient to establish the factual portion of his claim and provided a questionnaire for him to complete. Appellant did not submit a completed questionnaire or provide a written statement detailing how the February 5, 2015 incident occurred. As discussed above, the Board found the evidence of record insufficient to establish the factual portion of 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 did not meet his burden of proof to establish a traumatic injury in the performance of duty on February 5, 2015, as alleged.

---

<sup>13</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>14</sup> *See S.W.*, Docket No. 15-0396 (issued June 19, 2015); *V.H.*, Docket No. 12-1621 (issued December 21, 2012).

<sup>15</sup> *L.W.*, Docket No. 15-1191 (issued September 8, 2015).

<sup>16</sup> *Id.*

<sup>17</sup> *See Bonnie A. Contreras*, *supra* note 5.

<sup>18</sup> *See supra* note 2.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 10, 2015 is affirmed.

Issued: December 16, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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