

On appeal, appellant asserts that he called in sick on October 18, 2015, tried to return to work on October 19, 2015, but had to leave immediately to go to the hospital. He submitted additional documents on appeal.

FACTUAL HISTORY

On October 19, 2015 appellant, then a 28-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on October 17, 2015 he injured his left hand when placing handcuffs on an inmate. His supervisor noted on the claim form that his injury occurred in the performance of duty.

In support of his claim appellant submitted discharge instructions from the Medical Center of Southeast Texas, which indicated that he was seen on October 19, 2015 by Dr. Jacob Vigil, a physician Board-certified in emergency medicine, and was diagnosed with nondisplaced fracture of proximal phalanx of left thumb. He was prescribed Tramadol, provided with general discharge instructions for a fractured thumb, and referred to a surgeon for follow up. Lisa Holland, a nurse practitioner, signed a work release form verifying that appellant was treated in the emergency department and was able to return to work on October 20, 2015 with restrictions of no use of the left hand for 30 days or until evaluated by an orthopedist.

In a November 19, 2015 work release form a physician with an unidentifiable signature, indicated that appellant kept his appointment on that date, and that he may not return to work for two weeks.

By letter dated October 21, 2015, OWCP informed appellant that further evidence, including factual and medical evidence, was necessary to support his claim, and afforded him 30 days to submit this evidence. It found that the evidence was insufficient to establish that the incident occurred as alleged, and that the medical evidence neither provided a diagnosis or rationale relating a condition or injury to the incident. A questionnaire was provided which asked appellant to describe where he was and what he was doing when the injury occurred. Appellant did not submit any evidence within the 30-day time period.

By decision dated November 30, 2015, OWCP denied appellant's claim because he had not submitted sufficient evidence to establish that the event occurred as described.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof 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 period of FECA, that an injury was sustained 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. 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.³

³ *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

In order 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 or exposure which is alleged to have occurred.⁴ In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.⁵

The second component is whether the employment incident caused a traumatic injury and generally can be established only by medical evidence.⁶ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.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, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁸ An employee has not met his or her burden of proof of 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.⁹ 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 sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.¹⁰ 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.¹¹

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (August 2012).

⁵ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁶ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁷ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

⁸ *M.H.*, 59 ECAB 461 (2008); *George W. Glavis*, 5 ECAB 363, 365 (1953).

⁹ *S.P.*, 59 ECAB 184 (2007).

¹⁰ *Barbara R. Middleton*, 56 ECAB 634 (2005).

¹¹ *O.T.*, Docket No. 14-1803 (issued December 29, 2014); see also *Wanda F. Davenport*, 32 ECAB 552, 556 (1981).

ANALYSIS

OWCP denied appellant's claim because he failed to establish that the employment incident occurred as alleged. However, the Board finds that he has met his burden of proof to establish that the incident occurred. Appellant stated that on October 17, 2015 he injured his left hand while forcibly placing handcuffs on an inmate. He has consistently described the employment activity that caused the alleged injury. Appellant's statement is consistent with his behavior. The record contains hospital records indicating that appellant was evaluated on October 19, 2015 and received treatment for an injury to his left thumb. Appellant also filed his claim on October 19, 2015. His supervisor noted on the claim form that the incident occurred in the performance of duty. The Board finds that appellant's statements are consistent with the surrounding facts and circumstances, including the fact that he sought medical treatment and filed a claim form within two days of the alleged incident. Accordingly, appellant has established that he experienced the employment incident on October 17, 2015.¹²

The Board finds, however, that the medical evidence of record is insufficient to establish that appellant sustained a medical diagnosis causally related to the accepted employment incident. Appellant submitted notes indicating that he received treatment on October 19, 2015 at the Medical Center of Southeast Texas. However, the medical records with regard to this hospital visit do not include any description of the employment incident or provide any opinion indicating whether any injury was sustained as a result of the accepted employment incident. The Board also notes that the hospital records from appellant's October 19, 2015 visit do not contain a physician's signature. Although the records indicate that care was provided by Dr. Vigil and Ms. Holland, a nurse practitioner, the only signature is that of Nurse Holland. Medical evidence from a physician assistant or nurse practitioner does not constitute competent medical evidence under FECA.¹³ The work release form of November 19, 2015 also lacks a proper signature and does not address the circumstances of the employment incident. As noted, reports lacking medical identification do not constitute probative medical evidence.¹⁴

An award of compensation may not be based on surmise, conjecture, or speculation.¹⁵ As appellant did not establish that his medical condition was causally related to the accepted employment incident, he has failed to meet 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.

¹² See *G.W.*, Docket No. 13-1943 (issued July 29, 2014).

¹³ 5 U.S.C. § 8102(2). See also *V.C.*, Docket No. 16-0642 (issued April 19, 2016).

¹⁴ *V.R.*, Docket No. 14-1695 (issued January 9, 2015).

¹⁵ *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

CONCLUSION

The Board finds that appellant has established that the October 17, 2015 occurred as alleged, but that he did not meet his burden of proof to establish that he sustained an employment-related injury causally related to the October 17, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 30, 2015 is affirmed as modified.

Issued: July 15, 2016
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