

FACTUAL HISTORY

On February 5, 2015 appellant, then a 56-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that on January 5, 2015 at 12:30 p.m. he injured his right hip while lifting and relocating heavy, wet, and molded rubber mats. He noted that the mats were awkward and that his coworkers did not lift together. This report was received by OWCP on April 29, 2015. On the reverse side of the claim form, appellant's supervisor indicated that he did not receive notice of the injury until April 23, 2015. He advised that appellant stopped work on January 7, 2015. The employing establishment challenged payment of continuation of pay as the injury was not reported within 30 days.

Appellant provided an October 7, 2002 rating decision from the Department of Veterans Affairs (VA) for degenerative arthritis in the left hip following a total left hip arthroplasty. This VA decision also noted that appellant had sustained a fracture of his pelvis while in military service. Appellant received a rating of 50 percent from the VA for a total right hip arthroplasty due to pain and limitation of motion.

Appellant sought medical treatment on January 7, 2015 and Dr. Vijay Ragayan, a physician specializing in geriatrics, found that appellant was totally disabled through January 10, 2015. In a note dated January 30, 2015, Craig Brown, a physician assistant, indicated that appellant was planning to undergo additional right hip surgery. Appellant requested annual leave on February 2, 2015.

In a letter dated May 6, 2015, OWCP requested that appellant provide additional factual and medical evidence in support of his traumatic injury claim. This request included a questionnaire which requested an explanation as to the delay in notifying his employing establishment of the claimed injury. OWCP also requested that appellant provide a detailed description as to how his injury occurred. It afforded appellant 30 days to respond.

On May 7, 2015 appellant notified the employing establishment that he was scheduled for right hip replacement surgery on May 12, 2015.

By decision dated June 10, 2015, OWCP denied appellant's traumatic injury claim, finding that he had not submitted factual evidence sufficient to establish that the employment incident occurred as alleged.

On June 13, 2015 appellant submitted additional medical evidence regarding his right hip condition. He had undergone a right total hip replacement in 1999. In a note dated January 7, 2016, Dr. Ragayan explained that appellant's right hip pain had increased over the last two to three days. Appellant sought treatment at the VA for right hip and lower extremity pain on January 23, 2016 with Dr. Sharada Shekar, an internist. She diagnosed right hip pain. On January 29, 2015 a physician assistant, Craig Brown, who diagnosed loosening of his right hip replacement. On February 18, 2015 Dr. Steven Epstein, a radiologist, performed a right hip aspiration at the VA. On April 29, 2015 he sought treatment at the VA with Ada Manfredi, a nurse practitioner, for significantly worsening right hip pain since January 2015. The note indicated that there was no precipitant trauma or event that caused his worsening right hip pain.

Counsel requested reconsideration on May 26, 2016 and submitted a May 7, 2016 report from Dr. Melyssa Paulson, a Board-certified orthopedic surgeon. Dr. Paulson first examined appellant on January 29, 2015 due to right hip and leg pain. She noted that he underwent a right hip total arthroplasty in May 1999. Dr. Paulson explained that x-rays demonstrated that appellant's right femoral head was eccentrically located in the acetabulum, a change since 2012 x-rays. Appellant underwent a second right hip total arthroplasty on May 12, 2015. Dr. Paulson opined that there was no indication that the wear on appellant's 1999 replacement hip was affected by his employment.

By decision dated August 17, 2016, OWCP denied modification of its June 10, 2015 decision. It found that appellant failed to submit factual evidence substantiating that the employment incident occurred as alleged.

LEGAL PRECEDENT

OWCP defines 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. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."³ In order to determine whether an employee actually sustained an injury in the performance of duty, the 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.⁴ The second component is whether the employment incident caused a personal injury.

With respect to the first component of fact of injury, the employee has the burden of proof to establish the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence. 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 subsequent course of action. An employee has not met his burden of proof to establish the occurrence of an injury when the evidence casts serious doubt upon the validity of the claim. 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 serious doubt on an employee's statements in determining whether a *prima facie* case has been established. 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.⁵

³ 20 C.F.R. § 10.5(ee).

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *D.B.*, 58 ECAB 464, 466-67 (2007). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.3 (August 2012).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury occurred on January 5, 2015, as alleged.

The Board finds that appellant has not provided detailed factual information regarding his alleged employment incident, as requested. The only description of the January 5, 2015 incident provided by appellant is contained on the Form CA-1. Appellant alleged that he developed right hip pain while lifting and moving heavy, wet, and molded rubber mats at 12:30 p.m. He did not provide any witness statements, nor did he respond to OWCP's requests for further description of the employment incident. While appellant indicated on the Form CA-1 that he informed the employing establishment on February 5, 2015, the employing establishment indicated that it did not receive the form until April 23, 2015. Furthermore, the contemporaneous medical treatment notes do not include a description of a January 5, 2012 employment incident. The January 7, 2015 note from Dr. Ragayan indicated that appellant's right hip pain had increased over the last two to three days, but did not include a description of injury on or about January 5, 2012. Nursing notes from the VA indicated that appellant developed right hip pain with no precipitant trauma or event.

The Board finds that the circumstances of the case including late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment are unexplained, and cast serious doubt on an appellant's statements such that he has not established *prima facie* case of a traumatic injury on January 5, 2012. As appellant has not established that the incident occurred as alleged, it is not necessary for the Board to address the medical evidence.⁶

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 that a traumatic injury occurred on January 5, 2015, as alleged.

⁶ *D.B.*, 58 ECAB 464 (2006).

ORDER

IT IS HEREBY ORDERED THAT the August 17, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2017
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board