



## **FACTUAL HISTORY**

On August 4, 2016 appellant, then a 59-year-old emergency program specialist, filed a traumatic injury claim (Form CA-1) alleging that on July 24, 2016 at 11:30 a.m., he sustained a left ankle injury while on travel status (TDY) Washington at Dulles (Dulles) International Airport. He alleged both that he “tripped over some object on the floor” and “slipped on a wet floor” while walking with his suitcase to a shuttlebus. Appellant “developed soreness and sharp pain the following day at work.” The employing establishment advised that appellant was in the performance of duty when the claimed injury occurred.

In an August 12, 2016 letter, OWCP advised appellant of the evidence needed to establish his claim, including a detailed statement describing the July 24, 2016 incident, and medical evidence diagnosing an injury related to that incident. It afforded appellant 30 days to submit such evidence.

In response, appellant submitted an August 17, 2016 letter, asserting that at 3:00 p.m. on July 24, 2016, after arriving at Dulles International Airport, he “fell down the steps leading to the street” while trying to locate a chartered bus to a training facility. He did not experience left ankle pain until “the following day while in the class room,” prompting a supervisor to call an ambulance. Appellant also alleged that sleeping with his left foot hanging over the side of the bed the night of June 24, 2016 caused his ankle to swell. He contended that the hotel bed was “too short.”

Appellant later provided a September 8, 2016 letter, asserting that on July 24, 2016, while at Dulles International Airport “trying to catch the shuttle bus to the hotel, [he] tripped over [his] suitcase and fell on the floor.” He noted that this statement superseded his previous accounts of events.

In support of his claim, appellant provided a July 19, 2016 employing establishment travel itinerary, showing a scheduled 12:55 p.m. departure from John F. Kennedy (JFK) International Airport and arrival at Dulles International Airport, at 2:14 p.m. He also submitted July 25, 2016 emergency room discharge instructions regarding a left ankle sprain, photographs of medical bills, a bill for July 25, 2016 x-rays, a photograph of an adult’s left lower leg in a fiberglass cast, and August 18 and 25, 2016 notes from Dr. Russell Trahan, an attending podiatrist, holding him off work from August 5 to September 19, 2016.

By decision dated September 23, 2016, OWCP denied the claim, finding that fact of injury had not been established. It found that appellant had not submitted sufficient factual evidence to establish that the alleged July 24, 2016 incident occurred at the time, place, and in the manner alleged. OWCP noted that appellant’s conflicting accounts of the July 24, 2016 incident created doubt and confusion regarding the mechanism of injury.

## **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 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>3</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>4</sup>

To determine whether an employee sustained a traumatic 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 that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident that is alleged to have occurred.<sup>5</sup> 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.<sup>6</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>7</sup>

An employee’s statement 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.<sup>8</sup> Moreover, an injury does not have to be confirmed by eyewitnesses. The employee’s statement, however, 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 there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such 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 statement in determining whether a *prima facie* case has been established.<sup>9</sup>

### ANALYSIS

Appellant claimed that he sustained a left ankle sprain on July 24, 2016 while in travel status (TDY). He described two mechanisms of injury in his August 4, 2016 claim form, asserting that at 11:30 a.m. on July 24, 2016, he tripped over an unspecified object, and also slipped on a wet floor. OWCP advised appellant by August 12, 2016 letter of the type of evidence needed to establish his claim, including a detailed statement of how he was injured. Appellant subsequently changed his account of events in an August 17, 2016 letter, asserting that he was injured at 3:00 p.m. when he fell down steps at Dulles International Airport, and that his

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<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>5</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>6</sup> *S.N.*, Docket No. 12-1222 (issued August 23, 2013); *Tia L. Love*, 40 ECAB 586, 590 (1989).

<sup>7</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>8</sup> *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>9</sup> *Betty J. Smith*, 54 ECAB 174 (2002); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

sleeping position later aggravated the injury. He provided a third scenario on September 8, 2016, contending that he tripped over a suitcase at Dulles International Airport. OWCP denied the claim, finding that appellant failed to establish the threshold issue of fact of injury as he provided several conflicting accounts of how the injury occurred.

Appellant was consistent in identifying July 24, 2016 as the date of injury. However, this is the only unchanging element of his accounts. Appellant alleged variously that he sprained his ankle when he tripped over an unspecified object, tripped over his suitcase, slipped on a wet floor, or fell down stairs. In his claim form, he alleged that he was injured at 11:30 a.m., when his travel itinerary placed him at JFK International Airport, but later changed the time of injury to 3:00 p.m., after his arrival at Dulles International Airport. The Board finds that, due to the conflicting evidence regarding the time, place, and manner in which the alleged incident occurred, appellant has failed to establish his claim.<sup>10</sup> As noted, an employee has not met his burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>11</sup> Appellant has failed to meet his burden of proof. Therefore, OWCP's September 23, 2016 decision was appropriate under the circumstances of the case.

On appeal appellant contends that OWCP failed to fully review the medical record. However, as appellant failed to establish that the claimed incident occurred, it is unnecessary to address the medical evidence with respect to causal relationship.<sup>12</sup>

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 established a left ankle injury in the performance of duty on July 24, 2016, as alleged.

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<sup>10</sup> See *Caroline Thomas*, 51 ECAB 451 (2000).

<sup>11</sup> *Supra* note 9.

<sup>12</sup> *Alvin V. Gadd*, 57 ECAB 172 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 23, 2016 is affirmed.

Issued: April 5, 2017  
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