

**United States Department of Labor
Employees' Compensation Appeals Board**

C.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chicago, IL, Employer**

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**Docket No. 17-0627
Issued: June 28, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 25, 2017 appellant filed a timely appeal from a September 20, 2016 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ 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 an injury in the performance of duty on August 3, 2016.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence after OWCP rendered its September 20, 2016 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision; therefore, this additional evidence cannot be considered on appeal. 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

FACTUAL HISTORY

On August 3, 2016 appellant, then a 64-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on that same date he sustained a neck sprain when a private vehicle hit his vehicle head-on in a front-end collision. The incident was recorded as having occurred at 1:00 a.m. on Route 83 North and 3rd Avenue in Bensenville, Illinois. Appellant's routine work hours were noted as Monday through Friday from 6:30 p.m. to 3:00 a.m. He stopped work and received medical care on the date of injury. On the reverse side of the claim form, appellant's supervisor checked a box marked "yes" indicating that his knowledge of the facts about the injury comported with appellant's statements and that the injury was not caused by a third party.

An August 3, 2016 Elmhurst Memorial Healthcare emergency department report related that appellant sought treatment on that same date with Dr. Kevin P. Keron, a Doctor of Osteopathic Medicine, following a motor vehicle accident. He was diagnosed with lumbar and thoracic strain and released from care.

By letter dated August 15, 2016, OWCP informed appellant that the evidence of record was insufficient to establish that he actually experienced the incident or employment factor alleged to have caused injury, there was no diagnosis of any condition, nor was there a physician's opinion as to the cause of his injury. It provided a questionnaire for completion and requested that he submit a response in order to substantiate the factual basis of his claim. Appellant was afforded 30 days to provide the requested information.

On August 19, 2016 appellant responded to OWCP's development letter stating that his postal vehicle was hit head on by an oncoming vehicle. He also noted that he had no prior injuries.

By decision dated September 20, 2016, OWCP denied appellant's claim finding that the evidence of record failed to establish that the August 3, 2016 employment incident occurred as alleged.

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 or specific condition for which compensation is claimed are causally related to the employment injury.³ 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.⁴

³ *Gary J. Watling*, 52 ECAB 278 (2001).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

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 which is alleged to have occurred.⁵ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he or she sustained an injury in the performance of duty he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. He or she must also establish that such event, incident, or exposure caused an injury.⁶ Once an employee establishes that he or she sustained an injury in the performance of duty, he has the burden of proof to establish that any subsequent medical condition or disability from work for which he or she claims compensation is causally related to the accepted injury.⁷

FECA provides for the payment of compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.⁸ The phrase sustained while in the performance of duty in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of arising out of and in the course of employment.⁹

To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in his master's business, at a place when he may reasonably be expected to be in connection with his employment and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.¹⁰ In deciding whether an injury is covered by FECA, the test is whether, under all the circumstances a causal relationship exists between the employment itself or the conditions under which it is required to be performed and the resultant injury.¹¹

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

⁷ *Supra* note 3.

⁸ 5 U.S.C. § 8102(a).

⁹ *See Valerie C. Boward*, 50 ECAB 126 (1998).

¹⁰ *T.F.*, Docket No. 08-1256 (issued November 12, 2008); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Eugene G. Chin*, 39 ECAB 598 (1988).

¹¹ *See Mark Love*, 52 ECAB 490 (2001).

ANALYSIS

The Board finds that appellant failed to establish that he sustained a neck injury in the performance of duty on August 3, 2016, as alleged.

Appellant has not provided sufficient detail to establish that a traumatic incident occurred as alleged.¹² On his Form CA-1 he stated that he sustained a neck sprain on August 3, 2016 when a private vehicle hit his vehicle in a head-on collision. The Board notes that appellant's description of the traumatic incident is vague and fails to provide any specific detail or evidence establishing that the motor vehicle accident occurred as alleged.¹³

Appellant's August 19, 2016 response to OWCP's development letter also fails to provide sufficient detail regarding the traumatic incident. His statement that he was hit head on by an oncoming vehicle is generalized and fails to establish fact of injury.¹⁴ The record does not contain a police report describing the incident. By failing to submit evidence which establishes the employment incident and circumstances surrounding his alleged injury, appellant has not met his burden of proof to establish a traumatic injury as alleged while in the performance of duty.¹⁵

While the August 3, 2016 Emherst Memorial Healthcare report documents treatment for a motor vehicle accident on that date, the Board finds that it is also insufficient to establish fact of injury. While this document has some connection to appellant's claim, it is not relevant to the issue for which OWCP denied the claim, the failure to establish that the traumatic incident occurred as alleged.¹⁶ The report noted that appellant was involved in a motor vehicle accident and treated for a lumbar and thoracic sprain yet failed to establish the factual element of appellant's claim.¹⁷ Further, the report was not signed by a treating physician to establish a firm medical diagnosis.¹⁸

Thus, the Board finds that the record lacks factual evidence to support appellant's allegation that he sustained an injury on August 3, 2016, in the performance of duty as alleged.¹⁹

¹² *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹³ *See C.E.*, Docket No. 17-0106 (issued April 20, 2017).

¹⁴ *P.T.*, Docket No. 14-598 (issued August 5, 2014).

¹⁵ *A.H.*, Docket No. 16-0888 (issued August 4, 2016).

¹⁶ *David J. McDonald*, 50 ECAB 185 (1990).

¹⁷ *B.S.*, Docket No. 13-405 (issued July 18, 2013).

¹⁸ To establish a firm medical diagnosis and causal relationship, appellant must submit a physician's report in which the physician reviews the established incident or factors of employment alleged to have caused his condition and, taking these factors into consideration, as well as findings upon examination and appellant's medical history, explain how the incident or factors of employment caused or aggravated any diagnosed condition, and present medical rationale in support of his opinion. *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

¹⁹ *David R. Clark*, Docket No. 16-0083 (issued March 8, 2016).

On appeal appellant argues that his injury was work related and submitted additional evidence in support of his claim. As previously noted, this evidence cannot be considered by the Board as it was not submitted prior to OWCP's September 20, 2016 decision.²⁰

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 and 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish an injury in the performance of duty on August 3, 2016.

ORDER

IT IS HEREBY ORDERED THAT the September 20, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 28, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

²⁰ *Supra* note 2.