

FACTUAL HISTORY

On July 2, 2016 appellant, then a 35-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he sustained an umbilical hernia due to lifting a parcel from the delivery vehicle. He stopped work on July 2, 2016 and has not returned to work.

In a July 2, 2016 narrative statement, appellant related that the July 2, 2016 injury occurred as he was attempting to deliver a parcel which weighed 10 to 15 pounds. He explained that when he reached down to retrieve the parcel from the back of his vehicle, he felt an intense burning sensation from his navel to groin area. Appellant saw a small bulge around his navel area. After delivering the parcel, he returned to his vehicle and drove a short distance before contacting his supervisor.

In a July 2, 2016 statement, K.A., acting supervisor customer service, related that appellant informed her that he felt a burning sensation in his navel while bending to pick up a parcel for delivery. He informed her that he noticed a golf ball sized knot in his navel area after standing up. K.A. related that appellant stated that he had prior hernia problems and that he believed his hernia had popped out.

In an undated narrative statement, J.R., a coworker, related that appellant told him that he had previously been treated for hernia, which is how he recognized his current condition as a hernia.

The record contains one page of an authorization for examination and/or treatment (Form CA-16) signed by K.A. K.A. noted by checkmark that there was doubt as to whether the employee's condition was employment related.

A July 2, 2016 duty status form (Form CA-17) contained a diagnosis of umbilical hernia and lifting/carrying restrictions of no more than 10 pounds. No history of injury was provided and the physician's signature was illegible.

By correspondence dated July 13, 2016, OWCP informed appellant that the evidence of record was insufficient to establish his claim. Appellant was afforded 30 days to submit additional factual and medical evidence.

OWCP received additional evidence on July 25, 2016. In a July 2, 2016 emergency room report, Christopher C. Thomas, a physician assistant, diagnosed umbilical hernia and abdominal pain. He related that appellant was seen for a burning pain and pull in his abdomen which occurred after he bent down to pick up a parcel at work. Appellant's physical examination revealed a one centimeter mass near the umbilicus. In a July 4, 2016 addendum, Dr. Dewitt A. Pittman, a specialist in emergency medicine, noted that appellant had history of umbilical hernia and that he experienced swelling and pain at work after lifting a box.

In a report dated July 8, 2016, Dr. Whitney L. Webb, Board-certified in general surgery, noted that appellant was seen for complaints of pain and mid abdomen bulge. Under history of present illness, he reported that appellant was diagnosed with a traumatic ventral hernia in July 2014 following a motor vehicle collision while working for the employing establishment.

According to appellant the hernia was much smaller until July 2, 2016 when he lifted a heavy object. Appellant related that following the lifting of the heavy object, he experienced pain and a mid-abdomen bulge. A physical examination revealed a six centimeter bulge mid abdomen below the umbilicus, which was consistent with a ventral hernia.

In a July 8, 2016 disability note, Dr. Webb indicated that appellant would be able to return to work on July 11, 2016 with work restrictions and noted that surgery was scheduled for August 9, 2016.

On July 28, 2016 appellant provided responses to questions posed by OWCP. He stated that, prior to the July 2, 2016 incident, he had not been treated or diagnosed with a hernia. While a treating physician informed appellant that he had symptoms of hernia, he had not previously been diagnosed with a hernia. He also related that he had lifted several packages weighing more than 11 pounds on the day in question. Appellant denied telling J.R. that he had previously been diagnosed with a hernia. He related at the time of the July 2, 2016 incident he was performing the duties of his position by delivering parcels and that prior to the incident he had delivered several large parcels.

By decision dated August 16, 2016, OWCP denied appellant's claim. It found the evidence of record failed to establish that the incident occurred as alleged. OWCP found that appellant supplied conflicting descriptions regarding how the injury occurred. It noted that his various descriptions of reaching down, lifting, standing up, and bending down suggested more than one cause of injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing 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.⁴ 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.⁵

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.⁶ 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.⁷ Second, the employee must

³ *Supra* note 1.

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

⁷ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

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.⁹ 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 or her 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.¹⁰

ANALYSIS

On July 2, 2016 appellant stopped work and filed a traumatic injury claim alleging that, on that date, he sustained an umbilical hernia due to lifting parcels from his delivery vehicle. OWCP by decision dated August 16, 2016 denied appellant's claim, finding that he had failed to establish that the July 2, 2016 incident occurred as alleged due to inconsistencies in the factual evidence.

The Board finds that appellant has established the factual aspect of his alleged injury. Statements from a supervisor and a coworker are supportive of appellant's description of how the July 2, 2016 incident occurred. The Board finds that the July 2, 2016 emergency room report and addendum by Dr. Pittman describing the July 2, 2016 incident does not vary from appellant's description that appellant bent down to pick up a parcel and felt pain and a pull in his abdomen. The emergency room report and Dr. Pittman described the incident as occurring after appellant bent over to pick up a parcel at work, which is consistent with appellant's statement on his CA-1 form and statements from his supervisor and coworker. There is no contradictory evidence of record that this incident did not occur at the time, place, and in the manner alleged. Thus, contrary to OWCP's finding in its August 16, 2016 decision, the Board finds that appellant has established an employment incident during his scheduled work shift on July 2, 2016.¹¹

Whether or not this incident caused the diagnosed hernia condition is a separate component of fact of injury.¹² Causal relationship is a medical issue, which must be determined by review of the medical evidence.¹³ Appellant has established that a work incident occurred on

⁸ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

⁹ *See* 20 C.F.R. § 501.2(c)(1).

¹⁰ *Betty J. Smith*, 54 ECAB 174 (2002).

¹¹ *Thelma Rogers*, 42 ECAB 866 (1991).

¹² *See S.H.*, Docket No. 12-1776 (issued August 5, 2013).

¹³ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

July 2, 2016 in the performance of duty. The evidence of record supports that he felt pain while lifting a parcel from the back of his delivery vehicle on July 2, 2016. OWCP has not however evaluated the medical evidence of record to determine whether this incident caused an injury. The case shall be remanded to OWCP to consider whether the record establishes a medical condition causally related to the accepted incident. After this further development, OWCP shall issue a *de novo* decision regarding appellant's claimed July 2, 2016 work incident.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 16, 2016 is set aside and the case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: March 24, 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