



## **FACTUAL HISTORY**

On November 21, 2016 appellant, then a 53-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained pain in his right upper bicep. The date of the injury was reported on the claim form as May 16, 2016, based on “accumulation of work that day.” The reverse side of the claim form indicated that appellant had not stopped working.

In a November 11, 2016 letter, an employing establishment supervisor wrote that appellant had filed a prior claim for a right shoulder and bicep injury on November 12, 2014. The supervisor indicated that a June 2, 2016 recurrence of disability claim had been denied by OWCP, that appellant had “retried” by filing another Form CA-2a that was also denied, and was now filing a Form CA-1. According to the supervisor, appellant had worked light duty until June 8, 2015, and had worked regular duty since, with no issues. As to the alleged date of injury of May 16, 2016, the supervisor reported that appellant was off work and used sick leave, without reporting any type of incident.

An employing establishment human resources specialist indicated in a November 18, 2016 letter that appellant had claimed that the injury occurred on or about the middle of May 2016. The human resources specialist noted that appellant was off work on May 16, 2016.

OWCP also received an unsigned accident form report on November 21, 2016.<sup>3</sup> The report related that appellant had a prior claim for injury on November 12, 2014, and appellant had filed a notice of recurrence of disability (Form CA-2a) with respect to that claim. According to the report, OWCP had advised appellant to submit a Form CA-1 for a new injury.

As to medical evidence, appellant submitted an October 13, 2016 report from Dr. David Lamoreaux, a Board-certified orthopedic surgeon. Dr. Lamoreaux reported that appellant was last seen in September 2015, and was now reporting right bicep pain.<sup>4</sup> He reported a date of injury as November 10, 2014, and wrote that the “reviewed problems” were right shoulder pain, shoulder bursitis, right biceps tendinitis, right rotator cuff tear, and strain of the supraspinatus muscle or tendon.

By letter dated November 22, 2016, OWCP advised appellant that additional factual and medical evidence was necessary to establish his claim. Appellant was afforded 30 days to submit the necessary additional evidence.

On November 28, 2016 appellant submitted a note dated November 22, 2016 from Dr. Lamoreaux, relating that appellant was limited to 15 pounds lifting, with no repetitive motion.

By decision dated January 3, 2017, OWCP denied appellant’s claim for compensation. The decision found that the incident or events occurred as alleged. However, OWCP denied the

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<sup>3</sup> The report contains the name of a supervisor and appears to have been completed by a supervisor.

<sup>4</sup> The record contains a September 22, 2015 report from Dr. Lamoreaux indicating that appellant was seen for treatment of his right shoulder.

claim as the medical evidence was insufficient to establish the claim. Thus, fact of injury was not established.

### **LEGAL PRECEDENT**

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.<sup>5</sup> 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.<sup>6</sup> An employee seeking benefits under FECA has the burden of establishing an injury occurred while in the performance of duty.<sup>7</sup> 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. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.<sup>8</sup>

An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.<sup>9</sup> An injury does not have to be confirmed by eyewitnesses to establish 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.<sup>10</sup>

A claimant must provide detailed factual information regarding the alleged employment incident or incidents.<sup>11</sup> It must be clear what specific incidents appellant is alleging, when they occurred, and other relevant details of the circumstances surrounding the claimed injury.<sup>12</sup> The Board has also held that a claimant cannot establish fact of injury if there are inconsistencies in the evidence that cast serious doubt as to whether the specific event or incident occurred at the time, place, and in the manner alleged.<sup>13</sup> 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

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<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *Valerie C. Boward*, 50 ECAB 126 (1998).

<sup>7</sup> *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

<sup>8</sup> *See John J. Carlone*, 41 ECAB 354, 357 (1989).

<sup>9</sup> *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

<sup>10</sup> *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

<sup>11</sup> *J.N.*, Docket No. 17-0032 (issued April 21, 2017).

<sup>12</sup> *D.F.*, Docket No. 15-1745 (issued February 11, 2016).

<sup>13</sup> *Gene A. McCracken*, 46 ECAB 593 (1995); *Mary Joan Coppolino*, 43 ECAB 988 (1992).

doubt on an employee's statements in determining whether a *prima facie* case has been established.<sup>14</sup>

### ANALYSIS

Appellant filed a traumatic injury claim alleging a right biceps injury on May 16, 2016. As noted above, he must establish that an incident occurred as alleged, and submit medical evidence establishing an injury causally related to the employment incident.

Although OWCP found that the incident occurred as alleged, the Board finds that appellant has not met his burden of proof to establish an employment incident as alleged.

Appellant did not provide a clear statement as to what specific activity contributed to a right biceps injury. He did not describe any specific incident occurring on May 16, 2016, or any work activity he performed on that day. A traumatic injury is defined 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.<sup>15</sup> Appellant failed to establish when any alleged incident occurred. The claim form reports an injury date of May 16, 2016, but the employing establishment indicated that appellant was not at work on that date. To establish the factual component of his claim, appellant must provide a detailed description of any alleged work activity, when it occurred, and other relevant details.<sup>16</sup> OWCP advised appellant on November 22, 2016 that further factual evidence was necessary to establish his claim, but appellant did not submit the evidence necessary to establish his claim.

The Board accordingly finds that appellant has not met his burden of proof to establish his claim for compensation. Appellant did not establish that an employment incident occurred on May 16, 2016. As he has not established an incident occurred as alleged, the Board will not address the medical evidence.<sup>17</sup>

On appeal appellant refers to a mistake in case numbers and his doctor's opinion on causal relationship. The record indicated that he had a prior claim, but the decision on appeal adjudicated the traumatic injury claim filed on November 21, 2016 for an injury alleged to have occurred on May 16, 2016. For the reasons discussed above, appellant did not meet his burden of proof to establish the claim.

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.

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<sup>14</sup> *Robert A. Gregory*, 40 ECAB 478, 483 (1989).

<sup>15</sup> 20 C.F.R. § 10.5(ee).

<sup>16</sup> *See D.F.*, *supra* note 12.

<sup>17</sup> *See M.P.*, Docket No. 15-0952 (issued July 23, 2015); *Alvin V. Gadd*, 57 ECAB 172 (2005).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty on March 16, 2016, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 3, 2017 is affirmed as modified.

Issued: October 26, 2017  
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