

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

V.D., Appellant	)	
	)	
and	)	Docket No. 17-0112
	)	Issued: April 10, 2018
DEPARTMENT OF THE ARMY, CIVILIAN	)	
PERSONNEL ADVISORY CENTER,	)	
Aberdeen Proving Ground, MD, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On October 25, 2016 appellant filed a timely appeal from May 2 and August 17, 2016 merit decisions of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established an injury causally related to an accepted September 4, 2015 employment incident.

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<sup>1</sup> The Board notes that appellant submitted additional evidence after OWCP rendered its August 17, 2016 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from considering this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On March 24, 2016 appellant, then a 65-year-old pharmacist, filed a traumatic injury claim (Form CA-1) alleging that, on September 4, 2015, he injured his face and ribs when he tripped over wire under a desk and fell. He stopped work on the date of injury and returned to work the next day. The employing establishment did not controvert the claim.

By letter dated March 28, 2016, OWCP requested that appellant submit additional factual and medical evidence in support of his claim, including a detailed description of the alleged work incident and a comprehensive report from his attending physician addressing causal relationship between any diagnosed condition and the identified work incident. It afforded him 30 days to submit the requested information.

By decision dated May 2, 2016, OWCP denied appellant's traumatic injury claim, finding that he had not established that the September 4, 2015 employment incident occurred as alleged. OWCP noted that appellant had not responded to its March 28, 2016 request for additional evidence.

On May 19, 2016 appellant requested reconsideration. In a May 16, 2016 narrative statement, he related that he tripped on a wire sticking out from his desk when he went to pick up a folder. Appellant fell and hit his chest and head. He received medical treatment on September 4, 2015 and believed that it would be paid for by workers' compensation. Appellant provided an unsigned statement from a witness who saw him fall.

By decision dated August 17, 2016, OWCP modified its May 2, 2016 decision to find that appellant had factually established the occurrence of the September 4, 2015 employment incident. However, the claim remained denied as he had not submitted any supporting medical evidence.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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 is causally related to the employment injury.<sup>4</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>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

<sup>5</sup> *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

time and place, and in the manner alleged.<sup>6</sup> Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>7</sup>

### **ANALYSIS**

Appellant alleged that he sustained an injury to his ribs and head when he tripped over a wire under a desk and fell on September 4, 2015. He has established that the September 4, 2015 incident occurred at the time and place, and in the manner alleged. The issue, consequently, is whether the medical evidence of record establishes that he sustained an injury as a result of this incident.

The Board finds that appellant has not established that the September 4, 2015 employment incident resulted in an injury. Causal relationship is a medical question that must be established by a probative medical opinion from a physician.<sup>8</sup> OWCP, by letter dated March 28, 2016, informed him of the need to submit reasoned medical evidence from his physician describing the nature of his injury and its relationship to the September 4, 2015 work incident. Appellant, however, did not provide any supporting medical evidence. As noted, he has the burden of proof to submit sufficient medical evidence to demonstrate that the employment injury resulted in an injury.<sup>9</sup> Appellant failed to submit any medical evidence in support of his claim and thus failed to meet his burden of proof.<sup>10</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 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established an injury causally related to an accepted September 4, 2015 employment incident.

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<sup>6</sup> See *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>7</sup> See *T.H.*, 59 ECAB 388 (2008); *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>8</sup> See *C.W.*, Docket No. 17-0399 (issued June 19, 2017).

<sup>9</sup> See *K.U.*, Docket No. 17-0798 (issued October 10, 2017).

<sup>10</sup> See *S.R.*, Docket No. 17-1087 (issued August 21, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 17 and May 2, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 10, 2018  
Washington, DC

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

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

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