

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

E.G., Appellant)
and) Docket No. 17-1364
U.S. POSTAL SERVICE, POST OFFICE,) Issued: April 19, 2018
Federal Way, WA, Employer)

)

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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 2, 2017 appellant filed a timely appeal from a May 15, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has established an injury in the performance of his federal employment duties, as alleged.

FACTUAL HISTORY

On March 15, 2017 appellant, then a 44-year-old tractor trailer operator, filed an occupational disease claim (Form CA-2) alleging that he injured his left shoulder due to factors of his federal employment. He noted shoulder soreness and that the pain worsened at night.

¹ 5 U.S.C. § 8101 *et seq.*

Appellant indicated that he first became aware of his condition and its relation to his federal employment on March 14, 2017. He stopped work on March 15, 2017.

By development letter dated April 13, 2017, OWCP informed appellant that further information was necessary to support his claim, and afforded appellant 30 days to submit the necessary evidence. In addition to requesting medical evidence, it asked him to respond to a questionnaire regarding his employment-related activities that he believed contributed to his shoulder condition.

On March 15, 2017 Dr. Amol Shah, a physician Board-certified in emergency medicine, reviewed an x-ray of appellant's left shoulder and noted calcified supraspinatus tendon shown on x-ray, edema, and limited range of motion. He restricted appellant from using his left arm for three days, and placed appellant's arm in a sling. In a provider's initial report completed for Dr. Shah on March 15, 2017, appellant indicated that he was closing the doors of his tractor trailer when his shoulder started hurting.

In March 17, 2017 attending physician's (Form CA-20) and duty status (Form CA-17) reports, and accompanying progress note, Dr. Robert B. Kaler, a Board-certified family practitioner, diagnosed strain/tendinitis of the left shoulder. He indicated that he believed that the condition was caused or aggravated by the employment activity of "overuse, repetitive." Dr. Kaler noted that appellant was doing a lot of repetitive pushing and pulling of heavy doors at work, opening and closing trailers, and that he started noticing some soreness in the left shoulder, which progressed to the point of difficulty moving. He indicated that appellant was totally disabled from March 14 through 24, 2017. In a March 24, 2017 progress note and duty status report, Dr. Kaler indicated that appellant was able to perform full-time regular work.

By decision dated May 15, 2017, OWCP denied appellant's claim because he had not established fact of injury. It found that the evidence of record did not establish that the injury occurred in the performance of duty.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 the 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.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

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the

² *Id.*

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999).

presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁵

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.⁶ The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her 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.⁷

ANALYSIS

Appellant filed an occupational disease claim alleging that he injured his left shoulder in the performance of his federal employment duties. He explained that his shoulder was sore on March 14, 2017 and that the pain worsened overnight. In a development letter dated April 13, 2017, OWCP informed appellant that further information was necessary to support his claim. Although appellant responded by submitting several medical reports, he failed to respond to OWCP's questions with regard to his employment activities within the 30 days afforded.

The Board finds that appellant's statement on his Form CA-2 is insufficient to establish fact of injury.

Appellant did not provide a statement as to the factual circumstances surrounding his injury explaining the mechanism of injury, he merely indicated that his left shoulder hurt. The Board has held that to establish that an injury occurred in the performance of duty the employee must provide sufficient detail to establish that an occupational exposure occurred as alleged.⁸ The employee must describe the circumstances of his or her alleged injury and the duties he or she was performing which caused the injury.⁹ Appellant did not describe the circumstances surrounding his injury in sufficient detail to establish that an injury occurred in the performance of his federal employment duties.

⁵ *Id.*

⁶ R.T., Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 238, 241 (2005).

⁷ *Betty J. Smith*, 54 ECAB 174 (2002).

⁸ See *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁹ B.S., Docket No. 13-0405 (issued July 18, 2013).

In the statement accompanying Dr. Shah's report, appellant indicated that he was closing trailer doors, and his shoulder started hurting. However, Dr. Kaler indicated that appellant's employment activity was "overuse, repetitive." Appellant never provided OWCP a definitive statement as to how his injury occurred as well, his employment history as recorded by his physicians is inconsistent.¹⁰ It is not clear as to whether appellant is alleging that he injured his arm in a traumatic injury on March 14, 2017 or whether he injured it due to repetitive overuse.¹¹ There is no detailed statement to support either an occupational disease or a traumatic injury.

OWCP provided appellant the opportunity to clarify this matter, but he did not provide the factual responses requested by it or provide any evidence corroborating his employment duties. Appellant has therefore failed to meet his burden of proof.

As appellant failed to establish factors of his federal employment alleged to have contributed to his injury, it is unnecessary to address whether the medical evidence established a diagnosis causally related to appellant's employment duties.¹²

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 an injury in the performance of his federal employment duties, as alleged.

¹⁰ See A.S., Docket No. 16-0944 (issued November 2, 2016).

¹¹ 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. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

¹² See L.A., Docket No. 17-0138 (issued April 15, 2017).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 15, 2017 is affirmed.

Issued: April 19, 2018
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board