

FACTUAL HISTORY

On February 3, 2017 appellant, then a 46-year-old supervisory staff administrator, filed a notice of traumatic injury (Form CA-1) alleging that, at 6:45 a.m. on that date, he fell in the lobby of his duty station, sustaining “wrist, hand, and foot” injuries.”

In support of his claim, appellant submitted a February 3, 2017 urgent care center report from Dr. Douglas Woodward, Board-certified in internal medicine and family practice. Dr. Woodward related that appellant “was standing on a ladder that slipped and fell 12 feet to the ground,” with the onset of left hand and wrist pain and “to the left second and third toes from where the ladder struck his boots.” He noted appellant’s history of active thrombocytopenia. On examination Dr. Woodward observed contusion and swelling of the left second and third toes, snuff box tenderness of the left wrist, and tenderness of the left hand. He obtained x-rays of appellant’s left hand and wrist and the left second and third toes which were negative for fracture. Dr. Woodward diagnosed left hand and wrist pain, and contusion of the left second and third toes. He ordered application of a thumb spica cast, and “buddy taping” of the left second and third toes.

By development letter dated February 17, 2017, OWCP informed him that the evidence submitted was insufficient to establish that he actually experienced the incident or employment factor alleged to have caused injury, and that a physician’s opinion explaining how the alleged injury caused a diagnosed condition had not been received. It provided a development questionnaire for his completion and requested that he submit a response in order to substantiate the factual basis of his claim. Appellant was afforded 30 days to submit the necessary evidence.

OWCP requested that appellant submit a detailed factual statement corroborating the alleged February 3, 2017 work incident, and a medical report from his attending physician which explained how and why that event would have caused the claimed injuries. It afforded appellant 30 days to submit such evidence.

In response, appellant provided a February 17, 2017 follow-up report from Dr. Woodward, who related that appellant’s contusions to his left second and third toes had resolved, but that his left wrist remained symptomatic. On examination Dr. Woodward elicited mild pain in the proximal left hand with lateral movement of the left hand. He diagnosed left hand and wrist pain. Dr. Woodward also restricted lifting, pulling, and pushing to five pounds with the left arm. Appellant was directed to wear a prescribed splint “while at work and with activities at home.”

By decision dated March 27, 2017, OWCP denied appellant’s claim as fact of injury had not been established. It found that appellant submitted insufficient factual evidence to establish that the injury occurred in the performance of duty on February 3, 2017. OWCP noted that appellant failed to respond to the February 17, 2017 request for additional evidence describing the alleged fall, or any witness statements corroborating the incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.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 an employee sustained a traumatic 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 that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁶ An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁷ Second, the employee must 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 or her subsequent course of action. An employee has not met his or her burden in establishing 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

³ *Id.*

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ *S.N.*, Docket No. 12-1222 (issued August 23, 2013); *Tia L. Love*, 40 ECAB 586, 590 (1989).

⁸ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁹ *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

¹⁰ *Betty J. Smith*, 54 ECAB 174 (2002); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he sustained left foot, hand, and wrist injuries in the performance of duty on February 3, 2017, as alleged.

Appellant claimed that he sustained work-related wrist, hand, and foot injuries when he fell in the lobby of his duty station on February 3, 2017 at 6:45 a.m. While a February 3, 2017 medical report relates his account of falling from a ladder while at work, there is no corroboration of this incident. Appellant subsequently submitted additional medical evidence, but did not provide the requested factual statement or other evidence to corroborate the claimed February 3, 2017 fall. OWCP denied the claim, finding that he failed to establish fact of injury as he failed to provide sufficient factual evidence to establish that the claimed February 3, 2017 work incident occurred as alleged.

By letter dated February 17, 2017, OWCP requested that appellant respond to its factual development questionnaire and provide a more detailed description of the alleged employment incident in order to establish the factual element of his claim. Appellant did not respond to the questionnaire, nor did he provide any supplemental statement or detailed information surrounding the alleged February 3, 2017 work incident.¹¹ The evidence of record does not contain a detailed account of the alleged injury sufficient to establish that the incident occurred at the time, place, and in the manner alleged.

As appellant failed to submit sufficient factual evidence to establish that the claimed February 3, 2017 work incident occurred at the time, place, and in the manner alleged, he has failed to meet his burden of proof.¹² Consequently, the Board need not address the secondary issue of causal relationship.¹³

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 met his burden of proof to establish that he sustained left foot, hand, and wrist injuries on February 3, 2017 in the performance of duty, as alleged.

¹¹ *R. V.*, Docket No. 17-1286 (issued December 5, 2017).

¹² *Supra* note 5.

¹³ *Alvin V. Gadd*, 57 ECAB 172 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 27, 2017 is affirmed.

Issued: March 22, 2018
Washington, D

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