United States Department of Labor
Employees' Compensation Appeals Board

B.P., Appellant	)	
and	)	**Docket No. 19-0306**
	)	**Issued: August 9, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Lincoln, NE, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 27, 2018 appellant filed a timely appeal from a November 21, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 met his burden of proof to establish a traumatic injury in the performance of duty on December 4, 2017, as alleged.

FACTUAL HISTORY

On December 20, 2017 appellant, then a 36-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on December 4, 2017 at 12:00 p.m. he injured his right ankle while in the performance of duty. He explained that the injury occurred when he stepped on

[1] 5 U.S.C. § 8101 *et seq.*

an uneven surface which caused him to fall forward and land on his right hand and knees. Appellant stopped work on December 5, 2017 and returned on December 12, 2017. He resigned from the employing establishment effective December 12, 2017.[2] On the reverse side of the claim form, B.S., supervisor customer service, alleged that the injury had not occurred in the performance of duty. He noted that appellant initially indicated that his injury occurred at home, but subsequently advised that the injury happened at work.

Evidence received with the claim included December 4 and 8, 2017 notes, which indicated that appellant was under medical treatment. In a December 4, 2017 report, Dr. Julie Waddell, a Board-certified family practitioner, noted that appellant was seen for an ankle injury which appellant indicated occurred at 5:15 a.m. that morning when he stepped over a flower bed and twisted his right ankle. She diagnosed right ankle sprain, indicated that appellant had weight restrictions for December 5 and 6, 2017, and that a December 7, 2017 follow-up visit was scheduled. No further information was provided.

In a December 5, 2017 e-mail to B.S., sent at 12:19 a.m., appellant advised that he injured his ankle at home that morning. He noted that he had visited an urgent care facility after his shift and was diagnosed with a sprained ankle. Appellant advised that he would be off work through December 7, 2017 when he had a follow-up medical appointment.

In a December 20, 2017 statement, S.S., a supervisor, indicated that when appellant came to get his check on his day off, he told her that he had injured himself at home and not at work. She noted that she did not remember the date of the conversation.

In a December 26, 2017 unsigned statement, appellant indicated that he had twisted his ankle after he stepped on uneven ground after delivering a package to a specific address at approximately 9:30 a.m. on December 4, 2017. He noted that he continued to work after the incident.

In a development letter dated January 3, 2018, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for completion. OWCP afforded appellant 30 days to provide the necessary evidence.

In a series of e-mails dated December 7 and 8, 2017, appellant advised B.S. of his ankle condition, his follow-up visits, and his work status.

On December 26, 2017 the employing establishment requested that appellant respond to investigative questions regarding his claimed injury. In relevant part, appellant was asked whether his earlier responses of advising B.S. in a December 5, 2017 e-mail that he injured his ankle at home and his response of "no" during his December 12, 2017 employee evaluation to a question of whether his injury occurred while performing work duties were falsehoods. He responded "yes" in his December 26, 2017 response.

[2] A December 12, 2017 employee evaluation and/or probationary report indicated that appellant was not completing work as required.

In a January 19, 2018 statement, appellant advised that S.S. was the supervisor on duty when he returned to the station on the evening of December 4, 2017 and that he had informed her of his injury. He noted that, while sitting across from her, he had located and called an urgent care facility from his cell phone. Appellant indicated that S.S.'s statement about him picking up his paycheck was false.[3]

In a January 21, 2018 OWCP questionnaire response, appellant indicated that his injury occurred on December 4, 2017 at approximately 9:30 a.m. and that he sought medical treatment at the urgent care facility across the street from the employing establishment immediately after leaving work. He noted that his e-mail advising B.S. of his injury was sent shortly after midnight on December 5, 2017. Appellant explained that he did not report his injury as employment related because he was concerned about being fired. He indicated that he decided to correctly report his injury as employment related after he was terminated from his position as his ankle had not healed and his health insurance ended December 31, 2017.

Appellant also submitted several e-mail and text communications from his private e-mail account. In a December 4, 2017 text communication sent at 7:57 p.m. to R.G., a supervisor, appellant indicated that he had injured his ankle on the way out to his car that morning. He noted that his ankle did not bother him until the last couple hours of work. Appellant indicated that he was at urgent care and that he was unable to walk on his ankle.

In a December 4, 2017 text communication sent at 1:29 p.m. to L.P., a union officer, appellant noted that he was pretty sure that he did something to his ankle. He indicated that he was told that if you are injured during probation that you should say that it occurred at home. Appellant asked whether he should worry about that and explained that he "biffed it pretty hard today, and I'm pretty sure I did something to my ankle." L.P. responded that any reported accident could lead to him being let go, but technically employees were not fired due to injury. She indicated that appellant should report the injury if he was hurt.

In a December 16, 2017 e-mail to B.S., appellant advised that he forgot to mention that his ankle injury occurred while delivering packages. He explained that he had not reported it as occurring at work because he was afraid of being fired.

In a January 17, 2018 e-mail, L.P. indicated that on December 4, 2017 appellant sent her a text at approximately 1:29 p.m., inquiring how to report an injury. She noted that he had indicated that he had injured his ankle.

In a January 18, 2018 e-mail, C.H., a coworker, indicated that appellant had told her on December 4, 2017 that he had injured his ankle at work that day. He also told her that he did not want to report it because he thought he would be fired.

In a January 19, 2018 attending physician's report (Form CA-20), a physician with an illegible signature, reported a December 4, 2017 date of injury when appellant "stepped wrong."

[3] An image of a credit union checking account of November 29 and December 13, 2017 was provided.

The physician diagnosed a right ankle sprain and hand pain and checked the box marked "yes" indicating that the conditions were caused or aggravated by the described employment activity.

In a January 25, 2018 attending physician's report (Form CA-20), Dr. Waddell noted the date of injury as December 4, 2017. She indicated that on December 4, 2017 appellant reported tripping over a flower bed at home at 5:15 a.m. in the morning and twisting his ankle. On December 15, 2018 appellant indicated that he actually tripped at 9:30 a.m. while working on December 4, 2017. Dr. Waddell diagnosed sprain of unspecified ligament of the right ankle. She indicated that the injury occurred as a result of tripping over a flower bed, but it was unclear as to whether it occurred at home or at work. Dr. Waddell noted that appellant had been dismissed from his position.

By decision dated February 7, 2018, OWCP denied appellant's traumatic injury claim finding that the factual evidence of record was insufficient to establish that the December 4, 2017 incident occurred in the performance of duty, as alleged. It noted that his contradictory statements regarding where his injury occurred cast serious doubt on the validity of the claim.

On March 8, 2018 appellant requested an oral hearing before an OWCP hearing representative, which was held telephonically on September 13, 2018. At the hearing, he indicated that he was told in training that he could be fired if he reported a work injury while on probation. Appellant asserted that his text messages with L.P. should be enough to establish that his injury occurred at work. No new evidence was submitted.

By decision dated November 21, 2018, an OWCP hearing representative affirmed the February 7, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA,[4] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

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

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *See J.C.*, Docket No. 18-1803 (issued April 19, 2019); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

employment incident at the time, place, and in the manner alleged.[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 injury does not have to be confirmed by eyewitnesses in order to establish the fact 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. The employee has not met his 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. 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 serious doubt on an employee's statements in determining whether the claim has been established. An employee's statement alleging 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]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury in the performance of duty on December 4, 2017, as alleged.

Appellant sought medical treatment on December 4, 2017 for his right ankle with Dr. Waddell, who diagnosed a sprained right ankle. However, the history of injury he related to Dr. Waddell was that his injury occurred at 5:15 a.m. that morning when he stepped over a flower bed. Appellant subsequently claimed that his injury occurred at work, at 12:00 p.m. when he stepped on an uneven surface.

OWCP denied appellant's claim as there were inconsistencies in the evidence as to whether the alleged injury occurred in the performance of duty. As noted, an employee's statement alleging 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 and persuasive evidence.[10] In this case the hearing representative found and the evidence supports that appellant has alleged two very different versions as to where and when he sustained his right ankle injury on December 4, 2017. Appellant asserted that he lied about where the injury occurred because he did not want to get fired as he was in a probationary status. The Board finds that he has not established that his dishonesty as to the time, place and the manner of the injury was related to a fear of retaliatory discharge. In fact, the evidence indicates

[7] *M.M.*, Docket No. 17-1522 (issued April 25, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *J.N.*, Docket No. 18-0675 (issued December 10, 2018); *E.H.*, Docket No. 16-1786 (issued January 30, 2017).

[9] *T.M.*, Docket No. 17-1194 (issued February 4, 2019); *M.J.*, Docket No. 17-1810 (issued August 3, 2018); *S.P.*, Docket No. 10-0431 (issued November 24, 2010); *Mary Joan Coppolino*, 43 ECAB 988, 991 (1992).

[10] *See L.D.*, Docket No. 19-0039 (issued May 7, 2019); *Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995).

that soon thereafter appellant voluntarily resigned from the employing establish due to his failure to complete work assignments during his probationary period.

In his January 2, 2018 statement, appellant explained that, after he was fired, he decided to correctly report his injury as work related since his ankle had not healed and his health insurance had ended on December 31, 2017. The Board has held that inconsistent responses cast serious doubt on the validity of the claim.[11]

The Board finds that because of the factual inconsistencies of record appellant has not established that he had an employment-related injury on December 4, 2017, as alleged. Allegations alone by a claimant are insufficient to establish a factual basis for a claim.[12] A claimant must substantiate such allegations with probative and reliable evidence.[13] While appellant indicated that December 4, 2017 text messages from L.P., which noted his concerns about getting hurt and fired during probation substantiated his claim, he never specifically related in his text messages that he was injured at work. Furthermore, while C.H. indicated in her January 18, 2018 e-mail that appellant had informed her that he injured his ankle while working that day, her statement is of limited probative value as no specific details were provided as to how and when such alleged injury occurred.[14]

On appeal appellant argues that he established fact of injury in the performance of duty. However, given the inconsistencies in the evidence as to where and when the alleged injury occurred, he has not met his burden of proof to establish that he was injured on December 4, 2017 in the performance of duty, as alleged.

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.

[11] *See L.L.*, Docket No. 18-0861 (issued April 5, 2019); *Mary A. Payne*, Docket No. 00-1615 (issued March 15, 2002).

[12] *See generally M.C.*, Docket No. 18-1354 (issued April 2, 2019); *W.F.*, Docket No. 17-0640 (issued December 7, 2018); *Charles E. McAndrews*, 55 ECAB 711 (2004).

[13] *Id.*

[14] *Id.*

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a traumatic injury in the performance of duty on December 4, 2017, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 9, 2019
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