

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

M.C., Appellant)	
)	
and)	Docket No. 19-0473
)	Issued: August 9, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Brooklyn, NY, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 27, 2018 appellant filed a timely appeal from a November 16, 2018 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 over the merits of this case.²

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on September 16, 2018, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the November 16, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On September 17, 2018 appellant, then a 56-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right wrist injury on September 16, 2018 while in the performance of duty. He stated that he was injured when he fell down steps while carrying a large box. Appellant stopped work on the date of the claimed injury and has not returned.

In an undated attending physician's report (Form CA-20), Dr. David Edelstein, a Board-certified orthopedic hand surgeon, diagnosed right distal radius fracture and opined that appellant's diagnosis was causally related to his fall on September 16, 2018.

On September 17, 2018 Dr. Edelstein opined that appellant was unable to return to work for approximately six weeks.

In duty status reports (Form CA-17) dated September 21 and October 2, 2018, Dr. Edelstein opined that appellant was not capable of returning to work.

In an October 2, 2018 work capacity evaluation (Form OWCP-5c), Dr. Edelstein asserted that appellant had a right wrist fracture and was not able to perform his regular job until December 17, 2018.

In a October 16, 2018 development letter, OWCP indicated that when appellant's claim was first received it appeared to be a minor injury that resulted in minimal or no lost time from work. It notified him that it had now reopened the claim for formal consideration of the merits, requested additional evidence, and provided a factual questionnaire for his completion. The questionnaire inquired as to what caused appellant to fall, if he had any history of fainting spells, heart conditions, or epileptic seizures, and/or any hazards or special conditions at work that caused or contributed to his injury (*e.g.*, normal office furnishing, a slippery floor, etc.) or if he struck anything (*e.g.*, a chair, a wall, a desk, etc.) when he fell. OWCP afforded him 30 days to respond.

Appellant subsequently submitted duty status reports (Form CA-17) dated October 15 and 26, 2018 from Dr. Edelstein who continued to opine that appellant was not capable of regular work.

In a duty status report (Form CA-17) dated November 9, 2018, Dr. Edelstein released appellant to full-time, regular duty effective November 12, 2018.

By decision dated November 16, 2018, OWCP denied the claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred in the performance of duty on September 16, 2018, as alleged. It noted that it was unclear as to what caused appellant to fall as he failed to respond to the factual inquiries and, therefore, had not established the factual component of his claim.

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 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.⁷ Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁸ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁹

Appellant's burden of proof includes the submission of a detailed description of the employment factors which he or she believes caused or adversely affected a condition for which compensation is claimed.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury in the performance of duty on September 16, 2018, as alleged.

The only explanation that appellant provided pertaining to the claimed traumatic incident was the limited statement noted in his Form CA-1 where he alleged that he fractured his right wrist after he "fell down steps while carrying a large box" at 4:00 a.m. on September 16, 2018. By

³ *Supra* note 1.

⁴ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *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 *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁸ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *P.T.*, Docket No. 14-0598 (issued August 5, 2014).

failing to sufficiently describe the employment incident and circumstances surrounding his alleged injury, he has not established that the traumatic injury occurred at the time, place, and in the manner alleged.¹¹ In a March 12, 2018 development letter, OWCP advised appellant of the type of factual information needed to establish his claim. The letter's attached questionnaire included questions regarding the alleged traumatic event itself and if he had any medical conditions or special work conditions or hazards that caused or contributed to his injury. Appellant did not respond to OWCP's request for additional factual information.¹² Accordingly, the Board finds that he has not met his burden of proof.¹³

As appellant has not established the factual element of his claim, the Board need not address whether the medical evidence of record is sufficient to establish a diagnosed medical condition causally related to the employment incident, as alleged.¹⁴

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 an injury in the performance of duty on September 16, 2018, as alleged.

¹¹ *Id.*

¹² *K.S.*, Docket No. 17-2001 (issued March 9, 2018); *see also K.W.*, Docket No. 16-1656 (issued December 15, 2016).

¹³ *See D.C.*, Docket No. 18-0082 (issued July 12, 2018); *D.D.*, 57 ECAB 734 (2006).

¹⁴ *See R.L.*, Docket No. 17-1670 (issued December 14, 2018); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 9, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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