United States Department of Labor
Employees' Compensation Appeals Board

K.R., Appellant	)	
and	)	**Docket No. 19-0477**
	)	**Issued: August 14, 2019**
DEPARTMENT OF VETERANS AFFAIRS, OFFICE OF OPERATIONS, SECURITY, & PREPAREDNESS, Washington, DC, 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 December 27, 2018 appellant filed a timely appeal from a December 4, 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.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury in the performance of duty on August 15, 2018, as alleged.

FACTUAL HISTORY

On October 16, 2018 appellant, then a 47-year-old personnel security specialist, filed a traumatic injury claim (Form CA-1) alleging that on August 15, 2018 he was pushed and assaulted by his supervisor while in the performance of duty. He alleged that this caused a collapsed right lung. Appellant stopped work on September 10, 2018 and returned to work on October 5, 2018. On the claim form he noted that he went to the employing establishment's health unit on August 20, 2018 for a sore back and headache. He also indicated that he was on blood thinners and that he bruised easily. In a witness statement on the claim form, M.G., a coworker, indicated that he heard appellant say to Supervisor T.M., "Move I'm going to (illegible)" and that T.M. replied, "I'm still your boss." On the reverse side of the claim form P.M., a supervisor, indicated that appellant was not injured in the performance of duty as the medical documentation indicated that appellant had been diagnosed with pneumonia.

Appellant related, in an October 10, 2018 version of the Form CA-1, that T.M., his immediate supervisor, had assaulted/pushed him as retaliation for informing management of past and current "mistreatment, disrespectful statement, differential treatment and other abuse of T.M.'s position, power and authority." He provided a D.C. Police report number and the claim number for his Equal Employment Opportunity Commission (EEOC) case. Appellant explained that when T.M. pushed him, he fell back into the chair and the chair arm rest bruised the right side of his back which led to the collapsed right lung.

In a development letter dated November 1, 2018, OWCP explained that the evidence submitted was insufficient to establish that the alleged employment incident occurred as alleged. It also noted that no firm diagnosis of a work-related condition had been provided by a physician. OWCP asked appellant to complete a questionnaire and provide further details regarding the circumstances of the claimed August 15, 2018 employment injury. It afforded him 30 days for submission of the necessary evidence.

OWCP received an October 8, 2018 partial progress note from a certified physician assistant. The physician assistant noted that appellant had a history of recurrent pneumothoraxes with prolonged air leak and had recently undergone a right video-assisted thoracic surgery (VATS) with blebectomy and abrasion pleurodesis.

OWCP also received a November 5, 2018 letter from the employing establishment controverting the claim as causal relationship was not established.

By decision dated December 4, 2018, OWCP denied appellant's claim finding that the factual component of fact of injury had not been established. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

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,[3] 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.[4] 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.[5]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.[6] Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[7] The second component is whether the employment incident caused a personal injury.[8] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[9]

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 or her subsequent course of action.[10] The 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. Such circumstances as late notification of injury, lack of confirmation of

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

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

[5] *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).

[6] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[7] *See M.F.*, Docket No. 18-1162 (issued April 9, 2019); *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143(1989).

[8] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[9] *D.D.*, Docket No. 18-0648 (issued October 15, 2018); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[10] *See M.F., supra* note 7; *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

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 a case 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.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty on August 15, 2018, as alleged.

In a development letter dated November 1, 2018, OWCP requested that appellant submit clarifying information describing how his claimed injury occurred. However, appellant did not complete and return the questionnaire.[12]

The Board further notes that while appellant alleged that the claimed incident occurred on August 15, 2018, he did not stop work until September 10, 2018 and the only medical evidence of record indicates that he sought medical treatment for a recurring lung condition on October 8, 2018. Appellant did not submit medical evidence documenting that he related the history of the alleged employment incident for treatment of a medical condition resulting from the alleged incident. He has not explained these inconsistencies, which cast doubt on whether the employment incident occurred as alleged.[13]

On his October 10, 2018 Form CA-1 appellant provided a general description of how the injury occurred and noted the report number of a DC Police report and the claim number for his EEOC case. However, he did not provide copies of such documents to OWCP. Moreover, M.G.'s witness statement on the October 16, 2018 Form CA-1 did not relate witnessing the alleged push/assault and did not address appellant's alleged fall into his chair, but rather only addressed an oral disagreement between appellant and his supervisor.

By failing to respond to the questionnaire, appellant did not sufficiently explain circumstances surrounding his alleged injury. His actions subsequent to the alleged employment incident cast further serious doubt on the validity of the claim. Therefore, the Board finds that appellant has not met his burden of proof to establish that the traumatic injury occurred in the performance of duty on August 15, 2018, as alleged.[14]

[11] *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

[12] *See M.F., supra* note 7; *D.C.*, Docket No. 18-0082 (issued July 12, 2018).

[13] *Supra* note 11.

[14] *See M.F., supra* note 7; *H.B.*, Docket No. 18-0278 (issued June 20, 2018); *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

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 August 15, 2018, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the December 4, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 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