United States Department of Labor
Employees' Compensation Appeals Board

L.E., Appellant	)	
and	)	**Docket No. 18-1612**
	)	**Issued: February 25, 2019**
DEPARTMENT OF THE NAVY, NAVAL BASE KITSAP, Bremerton, 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 August 21, 2018 appellant filed a timely appeal from a July 9, 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 back injury in the performance of duty on May 1, 2018, as alleged.

FACTUAL HISTORY

On May 16, 2018 appellant, then a 42-year-old store worker, filed a traumatic injury claim (Form CA-1) alleging that, at 9:00 a.m. on May 1, 2018, he developed extreme pain in his

[1] 5 U.S.C. § 8101 *et seq.*

mid-back, ribs, and torso and "severe back strain" while reaching to stock and condense merchandise onto a top shelf at work. No evidence was submitted with his claim.

Appellant's manager noted on the reverse side of the claim form that she received notice of the claimed injury on May 16, 2018. She checked a box marked "yes" indicating that appellant was in the performance of duty when injured. Appellant's manager further indicated that her knowledge of the facts about the injury agreed with appellant's statements.

OWCP, by development letter dated May 23, 2018, informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of medical and factual evidence needed and provided a questionnaire for his completion, which requested that he clarify whether he was claiming an occupational disease or a traumatic injury. Appellant was afforded 30 days to submit the requested evidence.

Appellant subsequently submitted medical evidence. In a progress note dated May 15, 2018, Dr. Courtenay N. Havers, a Board-certified family practitioner, noted that appellant had related a history of injuring his back while working at the employing establishment. She explained that two weeks prior he reached overhead to stock potato chips onto a shelf and experienced a sudden spasm in the mid-thoracic spine. Dr. Havers noted that, on the date of injury, appellant was treated in urgent care by Dr. Keith C. Tang, a Board-certified family practitioner, who diagnosed lumbar spine strain. She examined him, diagnosed strain of the lumbar region, subsequent encounter, and addressed his treatment plan and work capacity. Dr. Havers reiterated her diagnosis of lumbosacral strain and provided follow-up instructions for appellant's condition in an appointment details report dated May 15, 2018.

In a June 4, 2018 duty status report (Form CA-17), Dr. Paul S. Darby, Board-certified in occupational medicine, listed the date of injury as May 1, 2018 and provided a diagnosis due to injury of thoracic strain. He advised that appellant could perform his regular work with restrictions of intermittent sitting, standing, walking, and pulling/pushing up to 20 pounds. In a narrative report dated June 4, 2018, Dr. Darby again noted May 1, 2018 as the date of injury. He related that appellant was seen for a back injury. Dr. Darby discussed examination findings, but did not provide a medical diagnosis.

An attending physician's report (Form CA-20) and a Form CA-17 report dated May 1, 2018 with an illegible signature provided a diagnosis of thoracolumbar strain and noted an injury date of May 1, 2018. The reports indicated that appellant developed an instant sharp pain in his back while shelving potato chips at work. The reports further indicated that the diagnosed condition was due to the claimed May 1, 2018 injury and provided work restrictions.

In a May 1, 2018 report, Dr. Tang related a history of injury that, at 9:00 a.m. on that same date, appellant felt back pain and strain while bending over, lifting things, and stocking shelves at work. He diagnosed low back sprain.

In work notes dated May 9 and 16, 2018, Anthony Lyon-Loftus, a certified physician assistant, noted appellant's complaint of back pain and addressed his work capacity and restrictions. In a referral order dated May 9, 2018, he referred appellant to physical therapy to treat his diagnosed lumbar sprain.

Dr. Havers, in a work capacity evaluation (Form OWCP-5c) dated May 15, 2018, restated her diagnosis of lumbar strain and discussed appellant's work capacity.

An unsigned assessment and plan report dated May 16, 2018 provided a diagnosis of lumbar sprain and listed appellant's vitals, plan of care, and current medications.

Dr. Darby, in a progress note dated June 4, 2018, indicated that appellant presented with a back injury sustained on May 1, 2018. He related that appellant developed acute mid-back pain as he simply placed a can of Pringles onto a shelf while working as a stocker at a grocery store. Dr. Darby reported examination findings and diagnosed resolved thoracic strain.

In a June 18, 2018 Form CA-17 report, Dr. Havers noted that a history of injury that her unidentified patient felt a pull in his back while lifting cases of illegible frozen items. She did not mention a date of injury. Dr. Havers reiterated his diagnosis of lumbar spine strain and diagnosed thoracic spine strain. She advised that the diagnosed conditions were due to injury. Dr. Havers provided work restrictions.

By decision dated July 9, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the May 1, 2018 employment incident occurred, as alleged. It noted that he did not respond to its May 23, 2018 questionnaire regarding the nature of his condition or injury and claim. Therefore, appellant did not meet the requirements for establishing an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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. 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.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[4]

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

[2] *Id.*

[3] *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *Gary J. Watling*, 52 ECAB 357 (2001).

[4] *A.D., id.; T.H.*, 59 ECAB 388 (2008).

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. 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 sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established. However, 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.[5]

ANALYSIS

The Board finds that appellant has established that the employment incident occurred while in the performance of duty on May 1, 2018, as alleged.

Although appellant did not respond to OWCP's May 23, 2018 development questionnaire regarding the nature of his claimed injury, the Board finds that the evidence of record is sufficient to establish that a specific traumatic incident of reaching to stock and condense merchandise at work occurred in the performance of duty on May 1, 2018, as alleged.

On his May 16, 2018 Form CA-1, appellant identified reaching to place merchandise onto a top shelf as the cause of his back injury. Moreover, he provided a single account of the mechanism of injury, specifically attributing his self-reported extreme pain in his central back, ribs, and torso, and severe back strain to the May 1, 2018 employment incident, and sought emergency medical treatment on the date of the employment incident. The medical reports of Drs. Havers, Tang, and Darby, and reports with an illegible signature all substantiate appellant's claim, which note a May 1, 2018 back injury after he reached to place merchandise onto a shelf at work. In addition, Dr. Havers diagnosed appellant as having back strain. Although appellant did not notify his manager about his injury until May 16, 2018, the manager indicated on the Form CA-1 that appellant was in the performance of duty and her knowledge of the facts about the injury agreed with his statements.

The Board finds that appellant's statements are consistent with the surrounding facts and circumstances in that he sought medical treatment on the same date as the employment incident, consistently reported to medical personnel that he was injured on May 1, 2018, and was diagnosed as having a back strain, and that the employing establishment agreed with his statement of facts. Accordingly, appellant has established that he was reaching to stock and condense merchandise onto a top shelf in the performance of duty on May 1, 2018.[6]

Given that appellant has established that the May 1, 2018 employment incident occurred as alleged, the issue turns to whether this incident caused an injury. As OWCP denied his claim based on a finding that he had not established the factual element of the claim, it did not develop or evaluate the medical evidence of record. Thus, the Board will set aside OWCP's July 9, 2018

[5] *L.F.*, Docket No. 17-0689 (issued May 9, 2018).

[6] *See L.D.*, Docket No. 16-1793 (issued February 6, 2017); *A.J.*, Docket No. 16-0339 (issued July 18, 2016).

decision and remand the case for further development of the medical evidence to determine whether appellant sustained an injury causally related to the May 1, 2018 employment incident and if so, to also determine the nature and extent of disability, if any.[7] After this and any further development, as deemed necessary, OWCP shall issue a *de novo* decision on the issue of whether he has met his burden of proof to establish an employment-related injury.

CONCLUSION

The Board finds that appellant has established that the employment incident occurred in the performance of duty on May 1, 2018, as alleged. The Board finds, however, that the case is not in posture for decision regarding whether he has established a traumatic injury causally related to the accepted May 1, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board

Issued: February 25, 2019
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

[7] *See J.L.*, Docket No. 17-1712 (issued February 12, 2018).