

FACTUAL HISTORY

On August 1, 2018 appellant, then a 57-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on July 16, 2018 he sustained head and neck injuries when the trainer he was shadowing flung open the back door of the truck, which struck him on the head, while in the performance of duty. He stopped work on July 27, 2018 and did not return. S.P., a supervisor, controverted the claim, indicating that he did not witness the event and contending that appellant did not report the claim until “unsatisfactory performance was discussed” on July 27, 2018.

OWCP received an August 6, 2018 attending physician’s report (Form CA-20) from Dr. David Gdula, a Board-certified internist. Dr. Gdula noted that appellant had hit his head on the door of a mail truck. He diagnosed cervicalgia.

On August 9, 2018 R.F., an employing establishment health and resource management representative, explained that on July 30, 2018 she spoke with appellant, who indicated that when he exiting the back of the truck, he was hit by the door. She explained that W.H., the carrier assigned to train appellant, also provided a statement. R.F. noted that W.H. indicated that appellant “never mentioned anything to him about hitting his head.” She also noted that W.H. asked appellant if he had “any questions, thoughts or concerns about the day and again never mentioned to him that he may have gotten injured.” R.F. indicated that W.H.’s statement contradicted appellant’s allegations. She noted that appellant also stated that “the impact was so hard that he saw stars.” R.F. argued that, if the injury occurred as appellant alleged, “it would seem likely that when the trainer lifted the door open [appellant] would be right in front of him and would have noticed [appellant].” She further indicated that he continued to work without any issues until July 27, 2018, when he sought medical treatment.

In an August 8, 2018 statement, W.H. indicated that he was tasked with training appellant on July 16, 2018. He explained that, during the course of the day, appellant entered and exited the rear of the truck. W.H. advised that he provided a path for appellant, which continued to clear throughout the day, as mail and parcels were removed from the vehicle. He noted that, at one point in the day, appellant made a noise getting in; however, he did not say anything and “never mentioned hitting his head.” W.H. also noted that on the return he asked appellant “if [appellant] had any questions, thoughts or concerns about the day and again never mentioned to me that he may have gotten injured.”

In a development letter dated August 15, 2018, OWCP informed appellant that the evidence submitted was insufficient to establish that he actually experienced the incident alleged to have caused the injury. It requested additional factual and medical evidence and provided a questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary evidence.

OWCP received a July 27, 2018 progress note and a work excuse from Dr. Gdula, who diagnosed cervicalgia and requested that appellant be excused from work until August 6, 2018,

due to a head/neck injury. It also received a resignation/transfer form signed by appellant on August 21, 2018.

By decision dated September 20, 2018, OWCP denied appellant's traumatic injury claim, finding that he had not established that a specific employment event occurred, as alleged, and, therefore, had not established the factual component of his claim. It explained that he had not responded to its questionnaire and it was unable to accept that the injury occurred, as alleged, since the evidence supported that there were inconsistent statements as to how the injury occurred. OWCP further noted that appellant had not submitted medical evidence that established a diagnosed medical condition causally related to an employment injury or event and, therefore, fact of injury had not been established.

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,⁴ 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.⁵ 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.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 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, generally only in the form of medical evidence, to establish that the employment incident caused a personal 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

³ *Supra* note 1.

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 *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).

⁷ *See C.C.*, Docket No. 17-1722 (issued July 5, 2018); *B.F.*, Docket No. 09-0060 (issued March 17, 2009).

⁸ *R.E.*, Docket No. 17-0547 (issued November 13, 2018); *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁹ *Id.*; *see also John J. Carlone*, 41 ECAB 354 (1989).

be consistent with the surrounding facts and circumstances and his subsequent course of action.¹⁰ 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 sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.¹¹

ANALYSIS

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

By development letter dated August 15, 2018, OWCP requested that appellant respond to its questionnaire and provide detailed information describing the alleged employment incident he believed caused his head injury. However, appellant did not respond to the request for factual information. As such, the record lacks sufficient factual evidence to establish specific details of how the claimed injury occurred.¹² Appellant's failure to respond to the questionnaire is especially important in light of the statement provided by W.H., who indicated that appellant made a noise getting in the vehicle; however, appellant did not say anything, and "never mentioned hitting his head" even when he was asked directly at the end of the training day whether he had any concerns. The Board also notes that appellant did not seek immediate medical treatment for the alleged neck and head injury, did not stop work or file the notice of injury until after performance issues were discussed with management.¹³ These inconsistencies cast serious doubt on appellant's claim. Accordingly, the Board finds that he has not met his burden of proof.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 a traumatic injury in the performance of duty on July 16, 2018, as alleged.

¹⁰ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667-71 (1987).

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

¹² *M.F.*, *supra* note 10.

¹³ *Supra* note 11.

¹⁴ *See D.C.*, Docket No. 18-0082 (issued July 12, 2018); *D.D.*, 57 ECAB 734 (2006).

ORDER

IT IS HEREBY ORDERED THAT the September 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board