United States Department of Labor
Employees' Compensation Appeals Board

L.G., Appellant	)	
and	)	**Docket No. 18-1050**
	)	**Issued: March 1, 2019**
DEPARTMENT OF COMMERCE, U.S. CENSUS BUREAU, Sneads Ferry, NC, 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 April 26, 2018 appellant filed a timely appeal from an April 17, 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 right knee condition occurred in the performance of duty on January 24, 2018, as alleged.

FACTUAL HISTORY

On March 6, 2018 appellant, then a 62-year-old field representative, filed a traumatic injury claim (Form CA-1) alleging that on January 24, 2018 he tore his right meniscus as he was getting

[1] 5 U.S.C. § 8101 *et seq.*

out of his car to mail diaries to the employing establishment's Atlanta Regional Office. He noted that he had right knee surgery on February 15, 2018, and was currently undergoing rehabilitation. On the reverse side of the Form CA-1, the employing establishment checked a box marked "yes" indicating that appellant was injured in the performance of duty.[2]

In a January 26, 2018 report, Dr. Ricardo Valle Diaz, an orthopedic surgeon, related appellant's complaints of right knee pain. He noted a first date of injury of "July 2017 playing golf." Dr. Diaz also reported a second date of injury of January 24, 2018 and described that appellant was getting out of his car and felt pain in his right knee. Upon physical examination of appellant's right knee, he observed tenderness in the medial compartment and pain on extreme limits of flexion and extension. McMurray's test was positive. Dr. Diaz reported that he suspected a bucket-handle medial meniscus tear and recommended a right knee magnetic resonance imaging (MRI) scan to confirm the diagnosis. He diagnosed right knee pain and right bucket-handle tear of the medial meniscus.

A January 30, 2018 right knee MRI scan showed bucket-handle tears of the medial and lateral menisci.

In a February 2, 2018 report, Dr. Diaz related appellant's complaints of right knee pain. He noted a first date of injury of "July 2017 playing golf." Dr. Diaz provided examination findings similar to his previous report and indicated that a right knee MRI scan confirmed that appellant had a bucket-handle tear of the right medial meniscus. He diagnosed bucket-handle tear of the medial meniscus of the right knee and peripheral tear of the lateral meniscus. Dr. Diaz recommended right knee surgery.

In a February 15, 2018 operative report, Dr. Diaz noted a preoperative diagnosis of right knee medial and lateral meniscus tears. He reported that appellant underwent a right knee arthroscopy with partial medial and partial lateral meniscectomies.

In a February 26, 2018 report, Dr. Diaz related that appellant had little discomfort or pain postoperatively. Upon examination of appellant's right knee, he observed swelling, tenderness, and limited passive and active motion.

In a March 6, 2018 letter, the employing establishment indicated that it was challenging appellant's claim based on causal relationship.

By development letter dated March 7, 2018, OWCP acknowledged receipt of appellant's claim and informed him that additional evidence was needed to establish his claim. It requested that he respond to the attached factual questionnaire in order to substantiate that the employment incident occurred as alleged. OWCP also requested medical evidence in support of appellant's claim. It afforded him 30 days to submit the requested information.

OWCP received appellant's response to its development letter on March 16, 2018. Appellant indicated that he was working on the date of injury. He explained that he had just picked

[2] The employing establishment subsequently challenged appellant's right to receive continuation of pay, noting that he filed his Form CA-1 more than 30 days after the January 24, 2018 incident.

up two diaries from a household in Sneads Ferry, North Carolina and was taking them to a FedEx facility for mailing. Appellant related that when he was exiting his automobile to mail the diaries to the Atlanta Regional Office he felt excruciating pain in his right knee. He noted that he was unable to put any weight on his knee and that he noticed significant pain and swelling. Appellant reported that he met with Dr. Diaz and had a right knee MRI scan performed, which showed a lateral and medial tear of his right meniscus. He related that he underwent surgery on February 15, 2018 and was currently undergoing physical therapy.

By decision dated April 17, 2018, OWCP denied appellant's claim, finding that he had not established an injury in the performance of duty on January 24, 2018, as alleged.

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] and 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. Generally, 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.[6] The second component is whether the employment incident caused a personal injury.[7] 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.[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

[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] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *John J. Carlone*, 41 ECAB 354 (1989).

[8] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

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.[9]

ANALYSIS

The Board finds that appellant has met his burden of proof to establish that the January 24, 2018 employment incident occurred in the performance of duty, as alleged. Therefore, the Board further finds that this case is not in posture for decision.

The Board notes that the employing establishment did not challenge that appellant was in the performance of duty at the time of the January 24, 2018 employment incident. Appellant indicated that he was getting out of his vehicle to mail case diaries to the regional office when he experienced right knee pain. He has consistently reported this mechanism of injury and sought prompt medical care, first with Dr. Diaz. As there is no evidence disputing that appellant was in the performance of duty at the time of the accepted January 24, 2018 employment incident, the Board finds that he established this element of his FECA claim.

Given that appellant has established that the January 24, 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 evaluate or develop the medical evidence of record. Thus, the Board will set aside OWCP's April 17, 2018 decision and remand the case for further development of the medical evidence to determine whether appellant sustained an injury causally related to the accepted January 24, 2018 employment incident and if so, to also determine the nature and extent of disability, if any.[10] After this and any further development, as deemed necessary, OWCP shall issue a *de novo* decision on the issue of whether appellant has met his burden of proof to establish an employment-related injury.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that the January 24, 2018 employment incident occurred in the performance of duty, as alleged. Therefore, the Board further finds that this case is not in posture for decision regarding whether he has established a traumatic injury causally related to the accepted January 24, 2018 employment incident.

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

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

ORDER

IT IS HEREBY ORDERED THAT the April 17, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: March 1, 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