

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

S.W., Appellant	)	
	)	
and	)	<b>Docket No. 18-1653</b>
	)	<b>Issued: March 12, 2019</b>
DEPARTMENT OF DEFENSE, DEFENSE	)	
INTELLIGENCE AGENCY, 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  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 21, 2018 appellant filed a timely appeal from an August 8, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the August 8, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to 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 evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish an October 5, 2017 traumatic injury in the performance of duty, as alleged.

## **FACTUAL HISTORY**

On November 2, 2017 appellant, then a 40-year-old department of defense civilian, filed a traumatic injury claim (Form CA-1) alleging that on October 5, 2017 he sustained a herniated L4-5 disc while jogging and running sprints while in the performance of duty. A witness, J.R., verified that he was working out with appellant on October 5, 2017 when appellant felt sharp lower back pain. Appellant stopped work on November 15, 2017.

In support of his claim appellant submitted an October 25, 2017 magnetic resonance imaging (MRI) scan which noted findings of L3-4, L4-5, and L5-S1 disc protrusions. OWCP also received an October 26, 2017 receipt from Touchstone Imaging in the amount of \$527.45, a signed statement of understanding conditions of assignment to deployment ready designation regarding GSB billets, and a business card for Dr. Randall F. Dryer, a Board-certified orthopedic surgeon.

By development letter dated June 15, 2018, OWCP advised appellant that the only evidence received with his CA-1 form was the October 26, 2017 MRI scan, and the miscellaneous unrelated documents. It informed him that the evidence submitted was insufficient to establish his claim and requested additional factual and medical evidence. Appellant was provided a questionnaire on which OWCP asked him to provide a description of his alleged injury and an explanation as to where he was and what he was doing at the time of his alleged injury. He was afforded 30 days to provide the necessary evidence.

In a separate letter dated June 15, 2018, OWCP requested that the employing establishment provide additional information regarding the circumstances of appellant's alleged October 5, 2017 employment injury. It requested a copy of his position description and physical requirements of his position. OWCP also inquired if appellant was participating in an employee physical fitness plan (PFP). The employing establishment was also afforded 30 days to respond.

No response was received from appellant or the employing establishment.

By decision dated August 8, 2018, OWCP denied appellant's traumatic injury claim finding that he had not submitted factual evidence sufficient to establish that the October 5, 2017 employment incident occurred, as alleged.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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

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<sup>3</sup> *Supra* note 1.

disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an October 5, 2017 traumatic injury in the performance of duty, as alleged.

Appellant has not adequately describe the circumstances of his injury, including how jogging and running sprints was incidental to the performance of his employment duties, and how this activity caused his alleged condition. To establish that an injury occurred at the time, place, and in the manner alleged, it is appellant's burden to clearly describe the mechanism of injury.<sup>9</sup> However, appellant failed to do so.

By development letter dated June 15, 2018, OWCP requested that appellant respond to its questionnaire and provide detailed information describing the alleged employment incident he believed contributed to his lumbar condition. However, appellant did not complete and return the questionnaire and there is no statement in the record from him describing the specific alleged employment-related incident.<sup>10</sup> In addition, the record is devoid of medical evidence containing a history of injury or a medical diagnosis due to the alleged October 5, 2017 incident.

The Board finds that the record lacks sufficient factual evidence to establish specific details of how the claimed injury occurred.

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<sup>4</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>5</sup> *See C.R.*, Docket No. 18-1332 (issued February 13, 2019); *S.P.*, 59 ECAB 184 (2007).

<sup>6</sup> *See C.C.*, Docket No. 17-1722 (issued July 5, 2018); *B.F.*, Docket No. 09-0060 (issued March 17, 2009).

<sup>7</sup> *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

<sup>8</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

<sup>9</sup> *Id.*

<sup>10</sup> *See D.C.*, Docket No. 18-0082 (issued July 12, 2018).

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 met his burden of proof to establish an October 5, 2017 traumatic injury in the performance of duty, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 8, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2019  
Washington, DC

Christopher J. Godfrey, 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