

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

C.M., Appellant)	
)	
and)	Docket No. 19-0009
)	Issued: May 24, 2019
U.S. POSTAL SERVICE, HEADQUARTERS)	
FACILITY SERVICES, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 1, 2018 appellant filed a timely appeal from an August 3, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 following the August 3, 2018 decision, OWCP received additional evidence and appellant submitted 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 April 4, 2018, as alleged.

FACTUAL HISTORY

On April 7, 2018 appellant, then a 63-year-old maintenance supervisor, filed a traumatic injury claim (Form CA-1) alleging that, at 11:59 p.m. on April 4, 2018, he sustained head/skull injuries when a radio cabinet fell off a wall and struck his head. He stopped work on April 5, 2018.

The employing establishment issued an authorization for examination and/or treatment (Form CA-16) on April 5, 2018, which indicated that appellant was authorized to seek medical treatment for injury to the skull/top of head.

In a statement dated May 23, 2018, D.D., a supervisor maintenance H2, related that at approximately 12:22 a.m. on April 5, 2018, he heard a loud crash while he was taking radios from employees. He felt something hit his lower calf, and he turned to see appellant holding his hands over his head and running towards the door. He asked appellant if he was okay and observed that a radio cabinet had fallen off the wall. D.D. checked on appellant to ensure he was not bleeding, asked him if he was alright, and instructed him to go sit down and inform his manager what had just occurred.

On May 29, 2018 appellant was seen by Dr. Carolyn A. Hammett, a Board-certified internist, who indicated that appellant was receiving medical treatment. Dr. Hammett noted that appellant was unable to work for the period May 1 through June 29, 2018.

In a development letter dated July 2, 2018, OWCP advised appellant that when his claim was first received it appeared to be a minor injury that resulted in minimal or no lost time from work. It noted that the employing establishment did not controvert continuation of pay or challenge the merits of the case and payment of a limited amount of medical expenses was administratively approved. However, the merits of the claim had not been formally considered and appellant's claim was being reopened because he had not returned to full-time work. OWCP explained the additional factual and medical evidence needed and requested that he respond to a factual development questionnaire. Appellant was afforded 30 days to submit the necessary evidence.

In response to OWCP's request appellant submitted an April 5, 2018 visit summary report from Dr. Enoch E. Akpandak, Board-certified in family medicine, a May 1, 2018 progress note from Dr. Hammett, physical therapy notes for the period May 2 through July 25, 2018 from Thuy N. Plater, a physical therapist, a May 1, 2018 x-ray interpretation of the cervical spine, and an April 5, 2018 computerized tomography (CT) scan of the brain.

In an April 5, 2018 report, Dr. Akpandak noted that appellant was seen for complaints of neck pain. Appellant related that while he placing a radio into a cabinet at work the cabinet fell on his head. Physical examination findings were provided. Dr. Akpandak diagnosed closed head injury, headache, neck pain, work-related injury.

Dr. Hammett, in May 1, 2018 progress report, noted that appellant presented with a head injury and that he was released to return to work that day. Appellant complained of neck pain when turning his head to the right. Dr. Hammett assessed neck pain.

In progress notes dated July 9, 2018, Dr. Hammett diagnosed neck pain and provided physical examination findings. In a verification of treatment form dated July 9, 2018, she indicated that appellant was disabled from work from July 9 to 31, 2018.

By decision dated August 3, 2018, OWCP denied appellant's traumatic injury, claim finding that he had not submitted factual evidence sufficient to establish that the April 4, 2018 employment incident occurred, as alleged.

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, 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.⁴ 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.⁵

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.⁶ Generally, fact of injury consists of two components that must be considered in conjunction with each another. 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.⁷ 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.⁸

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 Moreover, an injury does not have to be confirmed by eyewitnesses in order to establish the fact

³ *Supra* note 1.

⁴ *J.R.*, Docket No. 18-1079 (issued January 15, 2019); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

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

⁶ *See S.W.*, Docket No. 18-1653 (issued March 12, 2019); *C.C.*, Docket No. 17-1722 (issued July 5, 2018); *B.F.*, Docket No. 09-0060 (issued March 17, 2009).

⁷ *M.M.*, Docket No. 18-0769 (issued September 10, 2018); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁸ *W.C.*, Docket No. 18-1651 (issued March 7, 2019); *M.M.*, *id.*; *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *A.C.*, Docket No. 18-1567 (issued April 9, 2019); *Gregory J. Reser*, 57 ECAB 277 (2005).

that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.¹⁰ 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.¹¹

ANALYSIS

The Board finds that appellant has met his burden of proof to establish that the April 4, 2018 employment incident occurred as alleged.

On his claim form, appellant indicated that, on April 4 2018, he sustained head/skull injuries when a radio cabinet fell off a wall and struck his head. D.D., a witness to the incident indicated that he was collecting radios from employees during the night shift of April 4 to 5, 2018 when he heard a loud crash and felt something hit his calf. He saw that a radio cabinet had fallen off a wall and witnessed appellant holding his hands over his head. D.D. asked appellant if he was okay and instructed him to first sit down and then tell his manager what had occurred. On the reverse side of the claim form, the employing establishment indicated that the injury occurred in the performance of duty.

The Board finds that appellant's description of the incident on the Form CA-1 and the witness statement from D.D. are sufficient to establish that the April 4, 2018 employment incident occurred at the time and place, and in the manner alleged. Appellant provided a singular account of the mechanism of injury that has not been refuted by any evidence in the record.¹² The medical evidence of record also substantiated his description of the April 4, 2018 incident. In an April 5, 2018 report, Dr. Akpandak reported a history of injury of that appellant was placing a radio into a cabinet at work when the cabinet fell on his head. In addition, appellant's action surrounding the incident corroborate his description. He stopped work and sought medical treatment the morning of April 5, 2018. As noted above, a claimant's statement that an injury occurred at a given time, place, and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹³ The Board finds, therefore, that appellant has established that the April 4, 2018 employment incident occurred in the performance of duty, as alleged.

As appellant has established that the April 4, 2018 employment incident factually occurred, the question becomes whether this incident caused an injury.¹⁴ The Board will, therefore, set aside

¹⁰ A.C., *id.*; *Joseph H. Surgener*, 42 ECAB 541, 547 (1991).

¹¹ A.C., *supra* note 9; *Betty J. Smith*, 54 ECAB 174 (2002).

¹² *See S.W.*, Docket No. 17-0261 (issued May 24, 2017) (the Board found that OWCP improperly determined that the alleged employment incident did not occur when appellant provided consistent accounts of the claimed incident and there was no evidence to refute her detailed description); *see also J.L.*, Docket No. 17-1712 (issued February 12, 2018).

¹³ *Supra* note 9.

¹⁴ *See Willie J. Clements*, 43 ECAB 244 (1991).

OWCP's August 3, 2018 decision and remand the case for consideration of the medical evidence. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted employment incident and any attendant disability.¹⁵

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that the April 4, 2018 employment incident occurred in the performance of duty, as alleged. The Board further finds, however, that this case is not in posture for a decision with regard to whether appellant has established causal relationship between his diagnosed conditions and the accepted April 4, 2018 employment incident.

¹⁵ The Board notes that the employing establishment issued appellant a signed authorization for examination and/or treatment (Form CA-16) authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 24, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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