United States Department of Labor
Employees' Compensation Appeals Board

T.T., Appellant	)	
and	)	**Docket No. 19-0187**
	)	**Issued: May 29, 2019**
U.S. POSTAL SERVICE, JOSE MARTI STATION, Miami, FL, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 5, 2018 appellant filed a timely appeal from a July 12, 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 traumatic injury in the performance of duty on January 30, 2018, as alleged.

FACTUAL HISTORY

On April 27, 2018 appellant, then a 31-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 30, 2018 at 10:40 a.m., he injured his left ankle while in the performance of duty. He stated that there was fake grass covering a hole near a

[1] 5 U.S.C. § 8101 *et seq.*

mailbox and when he stepped in it his ankle popped. Appellant described his left ankle condition as osteochondritis dissecans of the talus. On the reverse side of the claim form, the employing establishment indicated that he had not stopped working. It also challenged the claim noting that appellant had not previously reported the alleged accident and had not submitted medical documentation.

In an unsigned and undated statement that accompanied the claim form, appellant noted that he had previously submitted a Form CA-1 to his supervisor, but that it seemed to have never reached its required destination. He stated that when he originally asked for the claim form, his supervisor had told him that he had not been injured at work, and that the injury was "'probably from skateboarding.'" Appellant noted that he did not skateboard. He obtained the appropriate claim form from a Union steward, and when he brought it to his supervisor, A.G., he reportedly did not even look at appellant and just asked what it was. Another individual, R.J., reportedly told appellant to leave the form on his desk and he would take care of it. Appellant made a copy of the claim form and put it in his drawer. He noted that when he returned to the station after surgery, there was nothing of his remaining in the drawer. Appellant further indicated that he was told to write this statement explaining the delay.

In an e-mail dated May 15, 2018, F.A., a supervisor, noted that he had not been informed of an incident as reported by appellant. He stated that he had been in a step meeting with appellant and noticed he was holding his knee. When F.A. asked appellant if he was okay, appellant reportedly responded that he had just hurt his knee playing soccer. In another e-mail dated May 25, 2018, A.G., a supervisor, stated that appellant had not reported an incident or injury to him at any time.

In a May 31, 2018 development letter, OWCP notified appellant that the employing establishment challenged his claim because he did not timely report the accident and had not provided medical evidence. It advised him of the factual and medical evidence necessary to establish his claim. OWCP provided appellant a questionnaire to complete regarding the circumstances of the alleged January 30, 2018 employment incident and afforded appellant 30 days to submit the requested factual information and medical evidence.

In a letter dated May 31, 2018, the employing establishment explained the reasons for its challenge of appellant's claim. It noted that he had not provided documentation regarding an earlier submission of his claim and that management denied being notified of the alleged injury. The employing establishment further stated that the alleged date of injury was the same date as an investigative interview for disciplinary action and noted that at the interview on January 30, 2018, appellant stated that on January 26, 2018 he left work early to have an x-ray performed on his foot. It stated that his claim was filed after a notice of removal on March 16, 2018. Attached to the letter was a request for disciplinary action dated January 30, 2018, which included an interview with appellant in which he stated that he had to leave early on January 26, 2018 in order to see his physician regarding an x-ray on his foot. The employing establishment also attached a notice of removal dated March 16, 2018.

A leave analysis form dated January 30, 2018 demonstrated that appellant had used unscheduled leave intermittently between December 11, 2017 and January 26, 2018. The first

page of a Family and Medical Leave Act form dated March 26, 2018 demonstrated that appellant had requested leave beginning March 22, 2018 for his own serious health condition.

On June 26, 2018 appellant replied to OWCP's questionnaire. He stated that, on the date of injury, he was delivering mail to a residence when he took a step onto what he thought was grass, but was actually fake grass. Appellant heard a "pop" in his ankle and fell. He noted that he was already wearing an ankle brace on his right ankle, and limped the rest of his route. Appellant stated that he took one day off work, but after three days, his ankle was still swollen. He noted that he told his supervisor about the incident on either February 2 or 3, 2018, and that the supervisor told him he probably was hurt by skateboarding. Appellant stated that he could not obtain a statement from a shop steward with relation to filing of his claim because she was no longer working in the same position or location. He noted that he sought treatment with his physician on February 5, 2018.

By decision dated July 12, 2018, OWCP denied appellant's claim. It found that he had not submitted the necessary factual evidence to establish that a work-related injury occurred as described. It concluded, therefore, that appellant had not met the requirements to establish an injury as defined by FECA.

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,[2] 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.[3] 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.[4] In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[5]

An employee has the burden of establishing the occurrence of an injury at the time and place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial

[2] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *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).

[5] *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

evidence.[6] An injury does not have to be confirmed by eyewitnesses to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[7] It is well established that a claimant cannot establish fact of injury if there are inconsistencies in the evidence that cast serious doubt as to whether the specific event or incident occurred at the time, place, and in the manner alleged.[8] 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 establishing a claim.[9] 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.[10]

ANALYSIS

The Board finds that appellant has met his burden of proof to establish that the employment incident occurred in the performance of duty on January 30, 2018, as alleged.

While there is a factual inconsistency of record regarding whether appellant had notified his supervisors of the alleged injury before filing this claim, the Board finds that it does not cast sufficient doubt to refute his account of the time, place, and manner of the claimed injury on January 30, 2018.[11] Appellant's statement on his claim form that his left ankle was injured at 10:40 a.m. on January 30, 2018 at a particular address when he stepped onto fake grass and fell into a hole, "popping" the ankle, contains clear detail regarding the time, place, and manner of his claimed injury.[12] He noted that he sought medical treatment with his physician on February 5, 2018 and that he took a day off work subsequent to the incident in relation to the injury. Appellant's remark that he left work on January 26, 2018 for a foot x-ray is consistent with his account of wearing an ankle brace on his right ankle on the date of the incident. That he had an

[6] *T.M.*, Docket No. 17-1194 (issued February 4, 2019); *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

[7] *J.R.*, Docket No. 18-1079 (issued January 15, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

[8] *T.D.*, Docket No. 15-1577 (issued January 20, 2016); *Gene A. McCracken*, 46 ECAB 593 (1995); *Mary Joan Coppolino*, 43 ECAB 988 (1992).

[9] *M.C.*, Docket No 18-1278 (issued March 7, 2019); *Robert A. Gregory*, 40 ECAB 478, 483 (1989).

[10] *L.G.*, Docket No. 18-1050 (issued March 1, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

[11] *See Dean S. Chartier*, Docket No. 96-1315 (issued March 16, 1998); *Tammy Weidman*, Docket No. 96-0037 (issued October 15, 1997); *Jan Toney*, Docket No. 94-0774 (issued September 26, 1995). *See also A.B.*, Docket No. 14-0522 (issued November 9, 2015) (fact of incident not established where there was substantial inconsistency between the employee's account of events and the accounts of coworkers and supervisor with regard to the time and place of his alleged injury); *V.J.*, Docket No. 13-1460 (issued January 7, 2014) (claimed incident not established where employing establishment investigation revealed inconsistencies between the employee's account of the claimed incident and those of coworkers); *J.W.*, Docket No. 12-0926 (issued October 1, 2012) (claimed incident not established where there were inconsistencies between the employee's statements and evidence at the scene of the alleged incident).

[12] *See supra* note 10.

investigative interview on the same date as the incident of January 30, 2018 and was later notified of removal on March 16, 2018 are also consistent with appellant's account.

As such, the only factual inconsistency of record is whether appellant had previously notified his supervisors of the alleged January 30, 2018 employment injury before submitting the current claim. The Board finds that this factual inconsistency, by itself, does not cast sufficient doubt to refute appellant's account of the time, place, and manner of the claimed injury.[13] As 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, and as appellant both responded to OWCP's request for additional factual information and his description of the incident contained clear detail regarding the time, place, and manner of his claimed injury, the record is sufficient to meet his burden of proof to establish that the incident occurred on January 30, 2018, as alleged.[14]

The Board therefore finds that the July 12, 2018 decision shall be set aside and the case remanded to OWCP to determine whether appellant has established an injury causally related to the accepted January 30, 2018 employment incident. Following this and any other such development as deemed necessary OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has established that the employment incident occurred in the performance of duty on January 30, 2018, as alleged.

[13] *Supra* notes 12 and 15.

[14] *Id. See also M.M.*, Docket No. 17-1522 (issued April 25, 2018); *D.C.*, Docket No. 17-0690 (issued July 19, 2017); *E.W.*, Docket No. 17-0069 (issued May 23, 2017).

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: May 29, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board