



Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.<sup>3</sup>

### **ISSUE**

The issue is whether appellant has met his burden of proof to establish an injury in the performance of duty on August 30, 2017, as alleged.

### **FACTUAL HISTORY**

On September 8, 2017 appellant, then a 52-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that on August 30, 2017 at 1:30 p.m., while in the performance of duty, his knee buckled from leaning and standing, which aggravated his bilateral knee arthritis, a prior occupational back injury, and prior left shoulder and bicep injuries.<sup>4</sup> He stopped work on August 30, 2017. On the reverse side of the claim form, the employing establishment indicated that appellant was in the performance of duty when he injured himself on August 30, 2017.

In a September 1, 2017 report, Dr. Sana L. Bloch, a Board-certified neurologist, noted a history of a 2012 lumbar injury and left wrist fracture when appellant slipped and fell on ice. He related appellant's description of increased lumbar pain while at work in a light-duty status on August 30, 2017. Dr. Bloch diagnosed a "[w]ork-related injury," lumbar radiculopathy, and bilateral chronic knee pain.

T.S., an employing establishment human resources consultant, controverted the claim in a September 21, 2017 statement. He indicated that appellant should have filed an occupational disease claim (Form CA-2) or claim for recurrence of disability (Form CA-2a) as he attributed the claimed conditions to employment events over more than one work shift or a prior employment injury.

In a report dated September 25, 2017, Dr. Russell F. Warren, a Board-certified orthopedic surgeon, related appellant's account of stumbling and reaching out to grab something while at work on an unspecified date, which increased his shoulder symptoms.

In an October 6, 2017 letter, T.S. contended that appellant provided conflicting accounts of the claimed injuries. Appellant had explained to T.S. that repetitive movements at work made

---

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the February 22, 2019 decision, OWCP received additional evidence. 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.*

<sup>4</sup> Under File No. xxxxxx778, OWCP accepted that on January 21, 2012 appellant slipped and fell on black ice while in the performance of duty and sustained a closed fracture of the lower end of the left radius and ulna. Under File No. xxxxxx190, OWCP accepted that on April 2, 2016 appellant pulled a food truck from a food service elevator while in the performance of duty and sustained a left rotator cuff strain and a strain of the fascia and long head of the left biceps. OWCP has not administratively combined these claims with the current claim.

him feel unsteady, but informed Dr. Warren that he had injured himself while reaching out to grab something.

In an October 24, 2017 report, Dr. Bloch diagnosed lumbar radiculopathy and right knee pain related to an August 30, 2017 employment incident.

In an October 25, 2017 report, Dr. Arnold B. Wilson, a Board-certified orthopedist, diagnosed degenerative joint disease of the bilateral knees caused by a “twisting injury” at work on August 30, 2017.<sup>5</sup>

In an October 28, 2017 report, Dr. Sam J. Yee, a Board-certified physiatrist, noted appellant’s history of a knee arthroscopy and a prior occupational left shoulder injury. He related appellant’s account that on August 30, 2017, he stumbled while in the “strip room” where used meal trays were removed from food trucks, and reached forward with both hands to grab a conveyor belt to break his fall. Appellant felt a pop in his left shoulder with the immediate onset of pain.

T.S. contended in a November 3, 2017 letter that appellant was not totally disabled from work, as he had telephoned several times while driving a vehicle. He asserted in a letter dated November 7, 2017 that during a telephone conversation regarding his claim form, appellant alleged that his knees had given way on August 30, 2017 while at work, and did not mention reaching for something as he had reported to Dr. Warren.

On November 8, 2017 appellant filed a claim for wage-loss compensation (Form CA-7) for disability from August 30 to November 16, 2017.

In a development letter dated November 15, 2017, OWCP explained that the evidence submitted was insufficient to establish that the alleged employment incident occurred as alleged. It also noted that no firm diagnosis of a work-related condition had been provided by a physician. OWCP asked appellant to complete a questionnaire and provide further details regarding the circumstances of the claimed August 20, 2017 employment injury. It afforded him 30 days to submit the necessary evidence.

In response, appellant provided a November 16, 2017 magnetic resonance imaging (MRI) scan of the left shoulder which demonstrated a supraspinatus tendon tear with retraction and a glenoid labral tear. He also submitted a December 11, 2017 report from Dr. Wilson and a December 14, 2017 report from Dr. Warren regarding appellant’s progress.

By decision dated December 21, 2017, OWCP denied appellant’s claim finding that the factual component of fact of injury had not been established. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

---

<sup>5</sup> In a November 1, 2017 report, Dr. Wilson diagnosed post-traumatic arthritis of both knees with medial joint space narrowing.

On January 5, 2018 appellant, through counsel, requested a telephonic oral hearing before a representative of OWCP's Branch of Hearings and Review.

The record indicates that appellant had returned to light-duty work by mid-June 2018.

During the hearing, held on June 12, 2018, appellant asserted that on August 30, 2017 as he stood at a conveyor belt, he reached for a tray on top of a food truck and he felt a sharp pain in his left shoulder. His back "gave out" and he leaned on a nearby garbage can for support. The can rolled away, and appellant's knee buckled. Appellant then reached forward to lean on the conveyor belt to break his fall and hyperextended his right knee. He submitted additional evidence.

Dr. Warren provided reports dated from September 14, 2016 to May 8, 2017 regarding a torn left rotator cuff with arthroscopic repair on January 17, 2017. He opined in a January 8, 2018 report that a recent MRI scan demonstrated a recurrent left rotator cuff tear.

Dr. Wilson opined in reports dated from January 15 to August 1, 2018 that the alleged August 30, 2017 employment incident caused direct trauma to both knees and the lumbar spine, exacerbating preexisting bilateral knee arthritis.

Dr. Yee reiterated in a May 5, 2018 report that on August 30, 2017 appellant had stumbled in the strip room at work, grabbed a conveyor belt, and felt a "pop" in his left shoulder."<sup>6</sup>

By decision dated August 14, 2018, OWCP's hearing representative affirmed the December 21, 2017 decision, finding that fact of injury had not been established as appellant had provided several conflicting accounts of the August 30, 2017 incident which cast serious doubt on his claim.

On December 26, 2018 appellant, through counsel, requested reconsideration. He submitted additional medical evidence.

In October 10, 2018 reports, Dr. Wilson opined that the August 30, 2017 employment incident caused a torque injury to both knees, permanently aggravating and accelerating degenerative arthritis. In November 28, 2018 and January 17, 2019 reports, he noted that appellant sustained lumbar and bilateral knee injuries at work on August 30, 2017.

By decision dated February 22, 2019, OWCP denied modification, finding that the additional evidence submitted failed to establish the factual component of fact of injury. It concluded, therefore, that the requirements had not been met 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

---

<sup>6</sup> Appellant also submitted imaging studies, physical therapy treatment notes, February 7 and March 23, 2018 work restriction slips, and a March 12, 2018 endocrinology report.

United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</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. 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>10</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>11</sup>

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 be consistent with the surrounding facts and circumstances and his or her subsequent course of action.<sup>12</sup> The employee has not met his or her burden of proof in establishing 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 serious doubt on an employee's statements in determining whether a case has been established. 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.<sup>13</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty on August 30, 2017, as alleged.

---

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

<sup>8</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>9</sup> See *J.C.*, Docket No. 18-1803 (issued April 19, 2019); *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).

<sup>10</sup> *M.M.*, Docket No. 17-1522 (issued April 25, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>11</sup> *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *J.N.*, Docket No. 18-0675 (issued December 10, 2018); *E.H.*, Docket No. 16-1786 (issued January 30, 2017).

<sup>12</sup> *K.R.*, Docket No. 19-0477 (issued August 14, 2019); *B.P.*, Docket No. 19-0306 (issued August 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

<sup>13</sup> See *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

Appellant sought medical treatment on September 1, 2017 with Dr. Bloch, who related appellant's account of increased pain while at work on August 30, 2017, but did not describe any mechanism of injury. In his September 8, 2017 claim form, he alleged that on August 30, 2017 at 1:30 p.m., leaning caused his knee to buckle, aggravating prior lumbar, bilateral knee, and left upper extremity conditions. However, appellant informed Dr. Warren on September 25, 2017 that he injured himself while reaching forward to grab something. On October 25, 2017 he reported an alleged August 30, 2017 "twisting injury" to Dr. Wilson. Additionally, appellant advised Dr. Yee on October 28, 2017 and May 5, 2018 that on August 30, 2017, he injured his left shoulder when he stumbled and reached forward with both arms to grab a conveyor belt to break his fall. T.S. contended in a November 7, 2017 statement that appellant initially stated that his knees had given way on August 30, 2017, causing him to stumble.

Appellant offered another account of the alleged August 30, 2017 employment incident during the June 12, 2018 hearing. He asserted that he experienced shoulder pain and his back "gave out" when he reached for a food tray. Appellant leaned on a garbage can for support, but the can rolled, causing his knees to buckle. He then reached forward to the conveyor belt for support, hyperextending his right knee.

The Board has held that inconsistent responses cast serious doubt on the validity of the claim.<sup>14</sup> Additionally, OWCP requested in its November 15, 2017 development letter that appellant submit clarifying information describing how the claimed injury occurred. However, appellant did not complete and return the questionnaire. By failing to respond to the questionnaire, appellant did not sufficiently explain the circumstances surrounding his alleged injury.<sup>15</sup>

While Dr. Wilson noted in reports beginning October 25, 2017 that appellant sustained August 30, 2017 lumbar and bilateral knee injuries and Dr. Yee indicated on October 28, 2017 and May 5, 2018 that appellant experienced an August 30, 2017 left shoulder injury, these statements are insufficient to establish appellant's claim because they are not contemporaneous with the alleged work incident and failed to identify specific details of that event.<sup>16</sup>

Because of the factual inconsistencies of record, the Board finds that appellant has not established that an injury occurred in the performance of duty on August 30, 2017, as alleged. Allegations alone by a claimant are insufficient to establish a factual basis for a claim.<sup>17</sup> A claimant must substantiate such allegations with probative and reliable evidence.<sup>18</sup>

---

<sup>14</sup> *K.R. supra* note 12; *see L.L.*, Docket No. 18-0861 (issued April 5, 2019); *Mary A. Payne*, Docket No. 00-1615 (issued March 15, 2002).

<sup>15</sup> *K.R. supra* note 12.

<sup>16</sup> *D.R.*, Docket No. 19-0072 (issued June 24, 2019).

<sup>17</sup> *K.R. supra* note 12; *see generally M.C.*, Docket No. 18-1354 (issued April 2, 2019); *W.F.*, Docket No. 17-0640 (issued December 7, 2018); *Charles E. McAndrews*, 55 ECAB 711 (2004).

<sup>18</sup> *Id.*

On appeal counsel contends that OWCP's February 22, 2019 decision was contrary to fact and law. However, for the reasons set forth above, appellant has not met his burden of proof to establish fact of injury.

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 an injury in the performance of duty on August 30, 2017, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 22, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 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