

ISSUE

The issue is whether appellant has met his burden of proof to establish right shoulder and neck injuries in the performance of duty on October 17, 2018, as alleged.

FACTUAL HISTORY

On October 25, 2018 appellant, then a 50-year-old Air Marine Agent, filed a traumatic injury claim (Form CA-1) alleging that on October 17, 2018 he sustained injuries to his right shoulder and neck when participating in a mat room workout during “ground robin and ground proficiency training” while in the performance of duty. On the reverse side of the claim form, the employing establishment checked a box marked “yes” indicating that appellant was in the performance of duty when the claimed injury occurred.

In a development letter dated November 9, 2018, OWCP informed appellant that the available evidence of record was insufficient to establish that the claimed October 17, 2018 employment incident occurred as alleged. It advised him of the type of factual and medical evidence necessary to establish his claim. OWCP attached a questionnaire for appellant’s completion. It afforded him 30 days to provide the necessary information.

OWCP received a November 5, 2018 urgent care note from Dr. Gerard Francis Blake, a Board-certified family physician. Dr. Blake noted that appellant presented with upper extremity weakness and reported that he injured his neck on October 17, 2018 while completing physical training at work. He indicated that he initially had significant bruising following the employment incident and continued to have increasing neck pain with range of motion. Dr. Blake diagnosed a neck injury, neck pain, and weakness of the right upper extremity. He transferred appellant to the hospital emergency department for an advanced examination and the completion of a work status report.

In an emergency room report of even date, Dr. Douglas Ballesteros, Board-certified in emergency medicine, noted that appellant presented with shoulder and neck pain. He reported that he was injured on October 17, 2018 while grappling hand-to-hand during combat training at work. Dr. Ballesteros suspected a right rotator cuff injury as a result of hyperextension of the right upper extremity.

A magnetic resonance imaging (MRI) scan study of appellant’s cervical spine revealed a small disc herniation at T2-3 and no significant acute injuries.

In a November 26, 2018 statement, appellant explained that he was temporarily on duty to a national training center in Harper’s Ferry, West Virginia, during the alleged incident and that his injury occurred while participating in advanced less lethal instructor training. He contended that his two instructors were aware of his injury. Since the incident, appellant stated that he suffered from a sore neck and shoulder and it had become more difficult to perform his work duties. He indicated that he had not sustained any other injury between the date of the employment incident and date of reporting it. Appellant further noted that he did not have any similar disabilities or symptoms prior to the alleged employment incident.

In an excuse from work note dated November 27, 2018, Dr. Fatma Deif, Board-certified in internal medicine, noted that she saw appellant on that date. She asked that he be excused from work and restricted him to light-duty work with no lifting over 10 pounds beginning November 26, 2018 through at least December 7, 2018.

By decision dated December 11, 2018, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the October 17, 2018 employment incident occurred as alleged. As appellant had not established the factual element of his claim, it found that he had not met the requirements for establishing 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,³ 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 whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established.⁶ Fact of injury consists of two components that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident that is alleged to have occurred.⁷ An employee has not met his or her burden of proof of 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.⁸ 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.⁹

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 *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁷ *C.B.*, Docket No. 18-0071 (issued May 13, 2019); *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *D.R.*, Docket No. 19-0072 (issued June 24, 2019); *T.M.*, Docket No. 17-1194 (issued February 4, 2019).

⁹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

An employee's statement 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 Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his 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. Circumstances such 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 doubt on an employee's statement in determining whether a *prima facie* case has been established.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish right shoulder and neck injuries in the performance of duty on October 17, 2018, as alleged.

Appellant has not established the factual component of his claim as he has not sufficiently explained how and when the claimed injury occurred. In his CA-1 form, he alleged that he sustained an injury to his right shoulder and neck in the performance of duty when he participated in a mat room workout during "ground robin and ground proficiency" training. Appellant provided no detailed account of the alleged injury or corroborating evidence, such as witness statements. He presented no evidence regarding the specific mechanism of injury, as required in a claim for traumatic injury, nor did he allege that he experienced a specific event, incident, or exposure at a definite time, place, and manner.¹² Appellant did not advise whether his injury was caused by a fall, lifting, pulling, or otherwise. He did not describe the exact and immediate consequences of the injury (*e.g.*, whether his shoulder was twisted or pulled, whether his neck was overextended). Appellant's vague recitation of the facts does not support his allegation that a specific incident occurred which caused a work-related injury.¹³

In a development letter dated November 9, 2018, OWCP requested that appellant describe the factual circumstances of his injury and provided him with a factual development questionnaire for completion. However, in his November 26, 2018 statement, appellant did not provide a detailed account of the alleged injury or explain how the injury occurred. He also indicated that he did not have statements from any witnesses or supervisors to corroborate the underlying facts of the alleged employment incident. As noted, an employee has not met his or her burden of proof

¹⁰ *M.S.*, Docket No. 18-0059 (issued June 12, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹¹ *D.R.*, Docket No. 19-0072 (issued June 24, 2019); *T.M.*, *supra* note 8.

¹² *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *see also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002).

¹³ *See M.C., id.*; *M.B.*, Docket No. 11-1785 (issued February 15, 2012).

where circumstances such as lack of confirmation of injury cast doubt on an employee's statement in determining whether a *prima facie* case has been established.¹⁴

In support of his claim, appellant submitted multiple medical records, including the November 5, 2018 medical reports from Drs. Blake and Ballesteros noting that appellant claimed his injury occurred on October 17, 2018 during grappling hand-to-hand combat training. The Board finds that these medical records are insufficiently detailed to meet his burden of proof to establish the factual basis of his claim.¹⁵

As appellant has not adequately responded to the request for factual information, the Board finds that the record lacks sufficient factual evidence to establish specific details of how the claimed injury occurred.¹⁶

The Board notes that, because appellant has not established the first component of fact of injury, it is unnecessary to discuss whether he submitted medical evidence sufficient to establish that a medical condition existed and whether the condition was causally related to an alleged employment incident.¹⁷

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 right shoulder and neck injuries in the performance of duty on October 17, 2018, as alleged.

¹⁴ *Supra* note 11.

¹⁵ *K.M.*, Docket No. 19-0367 (issued June 26, 2019).

¹⁶ *Supra* note 10; *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

¹⁷ *M.S.*, *supra* note 10; *see R.L.*, Docket No. 17-1670 (issued December 14, 2018); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997) (as appellant failed to establish that the claimed incident occurred as alleged, it is unnecessary to discuss the probative value of medical evidence).

ORDER

IT IS HEREBY ORDERED THAT the December 11, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 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