



## ISSUE

The issue is whether appellant has met his burden of proof to establish that an injury occurred on April 10, 2019 in the performance of duty, as alleged.

## FACTUAL HISTORY

On April 10, 2019 appellant, then a 51-year-old supervisor, filed a traumatic injury claim (Form CA-1) alleging that at 2:45 p.m. on that date he sustained a sprained ligament and bite to his left hand, as well as scratches to his left forearm, left bicep, neck, and face while in the performance of duty. He explained that a detainee swung a shackle, which hit his hand and that, during a cell extraction, the detainee bit his left hand and scratched him. On the reverse side of the claim form, appellant's supervisor, R.T., checked a box marked "no" indicating that appellant was not in the performance of duty when his injury occurred. R.T. then noted that appellant was struck with a chain in his hand and bitten while attempting to control a noncompliant detainee during the removal process. Appellant stopped work on the date of injury.

In a development letter dated April 15, 2019, OWCP informed appellant that he submitted no evidence to establish that the claimed April 10, 2019 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 seeking a full description of the events and circumstances surrounding the employment incident and other information for his completion. It afforded appellant 30 days to provide the necessary information.

In an April 10, 2019 medical report, Dr. Enrique Villalobos-Silva, Board-certified in emergency medicine, noted that appellant presented with pain in his right wrist and thumb and abrasions to his left arm caused by a detained person at his place of employment. He provided that as appellant attempted to control a detainee, the detainee hit him with his shackles and may or may not have bitten his left arm and hand. Dr. Villalobos-Silva also noted swelling in appellant's right thumb. In a diagnostic report of even date, Dr. Lance Knecht, a Board-certified diagnostic radiologist, performed an x-ray on appellant's right hand. He noted the remodeling of the fifth metacarpal from prior trauma and a healed fracture and provided that there were no acute findings. Based on the x-ray of appellant's right hand, Dr. Villalobos-Silva diagnosed hand and thumb contusions, skin abrasion, and a possible human bite as a result of the April 10, 2019 assault. He provided that appellant could return to work on April 14, 2019.

In an April 26, 2019 report of work status, an injury compensation specialist for the employing establishment, noted that appellant returned to regular-duty work on April 14, 2019 with no restrictions.

By decision dated May 22, 2019, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as he described. It noted that he did not provide specific details of the circumstances and what employment-related activities caused his condition as he did not submit a signed Form CA-1 or respond to OWCP's development questionnaire. OWCP 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<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 timely filed within the applicable time limitation period of FECA,<sup>4</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>5</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>6</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>7</sup> Generally, fact of injury consists of two components that must be considered in conjunction with one 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.<sup>8</sup> Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>9</sup> An employee's statements alleging that an injury occurred at a given time and in a given manner are of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>10</sup>

Pursuant to OWCP's procedures, no development of a claim is necessary when there is a visible injury, even when time has been lost from work due to disability, following a serious injury (motor vehicle accidents, stabbings, shootings, *etc.*).<sup>11</sup> The procedures provide that no development is necessary when the employing establishment does not dispute the facts of the case and there are no questionable circumstances surrounding the case. No medical report is required to establish a minor condition such as a laceration.<sup>12</sup> Sound judgment should be employed in these

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

<sup>4</sup> *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</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>6</sup> *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

<sup>8</sup> *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

<sup>10</sup> *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

<sup>11</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011).

<sup>12</sup> *Id.*

cases to provide appropriate and immediate medical care for the injured worker since expeditious treatment for these injuries is critical.<sup>13</sup>

### ANALYSIS

The Board finds that appellant has met his burden of proof to establish that an incident occurred in the performance of duty on April 10, 2019.

Appellant indicated on his claim form, that at 2:45 p.m. on April 10, 2019 he sustained a sprained ligament and bite to his left hand, as well as scratches to his left forearm, left bicep, neck, and face after a detainee swung a shackle at him and bit him during a cell extraction. While appellant's supervisor checked a box marked "no" indicating that appellant was not injured while in the performance of duty, his explanation confirmed that the mechanism of injury was appellant being struck in the hand by a chain and bitten by a noncompliant detainee during the removal process. The employing establishment provided no information to refute appellant's statement. Moreover, Dr. Villalobos-Silva's contemporaneous medical report provided a consistent history of injury, noted clinical findings, and diagnosed hand and thumb contusions, skin abrasion, and a possible human bite as a result of the April 10, 2019 assault.

Appellant submitted a singular account of the mechanism of injury that has not been refuted by any evidence in the record.<sup>14</sup> His actions surrounding the incident corroborate his description, as he sought medical treatment the same day after his alleged injury, presenting to the hospital with pain in his right wrist, hand, and thumb, as well as a human bite on his left hand and scratches. Dr. Villalobos-Silva's April 10, 2019 medical report also noted that appellant was injured after attempting to control a detainee and that the detainee struck his hand with shackles and bit his left hand. Thus, the Board finds that appellant has met his burden of proof to establish the April 10, 2019 employment incident occurred as alleged.

The Board further finds that the evidence of record is sufficient to determine that appellant's abrasions are causally related to the April 10, 2019 assault. OWCP's procedures provide that in cases where there is a serious injury from an employment incident, and the employing establishment does not dispute the facts of the incident alleged, that the claim may be accepted for conditions even without a medical report with other more serious conditions being developed through obtaining medical evidence.<sup>15</sup> Appellant indicated on his claim form, that at 2:45 p.m. on April 10, 2019 he sustained a sprained ligament and bite to his left hand, as well as scratches to his left forearm, left bicep, neck, and face after a detainee swung a shackle at him and bit him during a cell extraction. The accepted employment incident was an assault in which he was left injured and in need of emergency medical services. Upon obtaining emergency medical treatment, and after diagnostic testing, it was confirmed that appellant sustained skin abrasions on that date. The contemporaneous medical reports provide a consistent history of injury and Dr. Villalobos-Silva, in his April 10, 2019 report, diagnosed skin abrasions directly related to the

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<sup>13</sup> See *E.H.*, Docket No. 19-1282 (issued December 23, 2019); *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *R.T.*, Docket No. 08-0408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>14</sup> *A.C.*, Docket No. 18-1567 (issued April 9, 2019).

<sup>15</sup> See *supra* note 11.

assault in which appellant had been involved. The Board finds that this evidence is sufficient to establish that appellant sustained skin abrasions and those conditions are causally related to the accepted April 10, 2019 employment incident.

Upon return of the case file OWCP shall make payment and/or reimbursement of medical expenses and wage-loss compensation, if any, with regard to the accepted skin abrasions. It shall also consider the medical evidence of record with regard to additional alleged conditions related to the accepted employment injury. Following such further development as deemed necessary it shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that appellant has met his burden of proof to establish skin abrasions while in the performance of duty on April 10, 2019. The Board further finds that the case is not in posture for decision as to additional claimed conditions due to the accepted employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 22, 2019 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: April 21, 2020  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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