

He explained that he had to walk sideways on the grass for a couple of feet before he could access the driveway and slipped.² On the reverse side of the claim form, the employing establishment acknowledged that its account of the facts agreed with that of appellant's and indicated by checking a box marked "Yes" that he was injured in the performance of duty. However, it controverted his claim based on "fact of injury," noting that there was no medical evidence. Appellant did not stop work.

In an October 10, 2019 development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated November 15, 2019, OWCP denied appellant's traumatic injury claim finding that the factual evidence of record was insufficient to establish that the employment incident occurred as alleged. 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 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 timely filed within the applicable time limitation period of FECA,⁴ 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.⁵ 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.⁶

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁷ The second component is whether the employment incident caused a personal injury.⁸

² Appellant's statement as to the cause of the injury was partially illegible.

³ *Supra* note 1.

⁴ *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *M.G.*, Docket No. 18-1616 (issued April 9, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ 20 C.F.R. § 10.115; *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

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 subsequent course of action.⁹ 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 determining whether a *prima facie* claim has been established.¹⁰ An employee's statements 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.¹¹

ANALYSIS

The Board finds that appellant has met his burden of proof to establish an incident in the performance of duty on September 27, 2019, as alleged.

To establish a claim for compensation in a traumatic injury claim, an employee must submit a statement that explains how the claimed injury occurred.¹² Appellant indicated on his claim form that he injured his left shoulder when he slipped and fell when carrying a large box of dog food. He explained that he slipped when attempting to gain access to the driveway by walking sideways on the grass for a few feet. The employing establishment indicated by checking a box marked "Yes" that the incident occurred in the performance of duty and also acknowledged that it was in agreement with appellant's version of the facts. The Board finds that appellant has provided a detailed description as to how the alleged September 27, 2019 incident occurred and that there is no strong or pervasive evidence to refute his account of the occurrence of the September 27, 2019 incident. Thus, his statement stands and establishes that an employment incident occurred on September 27, 2019, as alleged.

As appellant has established that the September 27, 2019 employment incident factually occurred, the question becomes whether this incident caused an injury. The Board will, therefore, remand the case for any necessary further development, to be followed by a *de novo* decision on the issue of whether appellant has sustained an injury causally related to the accepted September 27, 2019 employment incident.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish an incident in the performance of duty on September 27, 2019, as alleged. The case is not in posture for decision, however, with regard to whether he has established an injury causally related to the accepted September 27, 2019 employment incident.

⁹ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667-71 (1987).

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

¹¹ *Id.*; *see also S.S.*, Docket No. 19-1815 (issued June 26, 2020).

¹² *R.B.*, Docket No. 19-1026 (issued January 14, 2020).

ORDER

IT IS HEREBY ORDERED THAT the November 15, 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: July 17, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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