United States Department of Labor
Employees' Compensation Appeals Board

J.A., Appellant	)	
	)	
and	)	**Docket No. 19-1292**
	)	**Issued: January 6, 2020**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Cleveland, OH, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 17, 2019 appellant filed a timely appeal from a November 20, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees'

[1] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of the last OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* C.F.R., § 501.3(e)-(f). One hundred and eighty days from November 20, 2018, the date of OWCP's decision was May 19, 2019. As this fell on a Sunday, appellant had until the following business day, Monday, May 20, 2019 to file the appeal. Since using May 21, 2019, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is May 17, 2019, which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

ISSUE

The issue is whether appellant has met his burden of proof to establish a right knee injury in the performance of duty on August 8, 2018, as alleged.

FACTUAL HISTORY

On August 13, 2018 appellant, then a 48-year-old custodial laborer, filed a traumatic injury claim (Form CA-1) alleging that at 12:55 p.m. on August 8, 2018 he injured his right knee while in the performance of duty. He provided a narrative statement explaining that he had returned to the employing establishment after acquiring a weed trimmer from the Beachwood Post Office. Appellant asserted that he was straightening up and rearranging equipment in the storage garage when he left a sharp pain behind his right knee causing him to immediately spring back onto his left leg. He noted that, while he treated his right knee with ibuprofen, ice, and a bandage, this resulted in minimal improvement.

The employing establishment issued an authorization for examination and/or treatment (Form CA-16) on August 13, 2018, which allowed appellant to treat with Dr. Trent Peppard, an osteopathic physician specializing in emergency care, for treatment associated with the claimed August 8, 2018 employment injury.

In an August 13, 2018 form report, Dr. Peppard noted that appellant was moving or rearranging equipment in a room at work on August 8, 2018 and injured his right knee. He diagnosed knee pain. In emergency room notes of the same date, Dr. Peppard indicated that appellant was packing boxes and developed sharp-onset knee pain. He diagnosed knee pain, probably meniscal in nature. The date of the alleged incident was listed as August 11, 2018.

In an October 19, 2018 development letter, OWCP informed appellant that, when his claim was first received it appeared to be for a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. It had now reopened the claim for formal consideration of the merits because he requested physical therapy. OWCP requested that appellant submit a narrative medical report from his physician, which contained a detailed description of findings and diagnoses, explaining how the reported incident caused or aggravated his medical condition. It also provided a factual questionnaire for his completion. OWCP afforded appellant 30 days to respond.

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[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the November 20, 2018 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.*

In a note dated October 17, 2018, Dr. David Krahe, an osteopath Board-certified in orthopedic surgery, examined appellant due to right knee pain. He reported that appellant experienced a twisting, weight-bearing injury to his right knee on August 8, 2018 at work. Dr. Krahe found pain on palpation on the medial joint line and McMurray's sign medially.

On November 14, 2018 appellant completed OWCP's development questionnaire, indicating that he was rearranging industrial equipment, including four snow blowers, a walk-behind lawn mower, and a push lawn mower in the employing establishment grounds room when he was injured on August 8, 2018. He asserted that he felt an immediate pain in his right knee while repositioning one of the lawn mowers. Appellant denied describing packing boxes.

Appellant provided an October 17, 2018 note from Dr. Krahe diagnosing tear of the right medial meniscus and prescribing physical therapy.

By decision dated November 20, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the August 8, 2018 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 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,[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 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.[7] 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

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

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

[6] *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).

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

is alleged to have occurred.[8] Second, the employee must submit sufficient medical evidence to establish that the employment incident caused a personal injury.[9]

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 or her subsequent course of action. An employee has not met his or her 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 met his burden of proof to establish that the August 8, 2018 employment incident occurred in the performance of duty, as alleged.

On his claim form appellant alleged that he injured his right knee on August 8, 2018 at 12:55 p.m. when rearranging and straightening equipment while in the performance of duty. He also provided a narrative statement explaining that he was straightening and rearranging equipment in the storage garage when he left a sharp pain behind his right knee. In an August 13, 2018 form report, Dr. Peppard related that appellant was moving or rearranging equipment in a room at work and injured his right knee. On November 14, 2018 appellant completed OWCP's development questionnaire and described rearranging industrial equipment, including four snow blowers, a walk-behind lawn mower, and a push lawn mower in the employing establishment grounds room when he was injured on August 8, 2018. He noted that, while repositioning one of the lawn mowers, he felt an immediate pain in his right knee.

The Board finds that appellant has consistently described the employment incident as occurring on August 8, 2018 while rearranging and straightening equipment, specifically repositioning a lawn mower. Furthermore, appellant denied packing boxes on August 8, 2018. While the August 13, 2018 emergency room intake form noted the incident date as August 11, 2018 and that appellant was packing boxes, all of the other evidence of record, including the employing establishment's Form CA-16 issued on August 13, 2018, noted the incident date as August 8, 2018 and indicated that he was repositioning equipment, not moving boxes.

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[8] *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).

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

[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.*, Docket No. 17-1194 (issued February 4, 2019).

As noted, 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 and persuasive evidence.[12] The Board finds that, under the circumstances of this case, appellant's allegations of sustaining a right knee injury due to moving equipment at work on August 8, 2018 have not been refuted by strong or persuasive evidence and there are no inconsistencies sufficient to cast serious doubt on his version of the employment incident.[13]

As appellant has established that the August 8, 2018 employment incident occurred, as alleged, further consideration of the medical evidence is necessary.[14] For these reasons, the case will be remanded to OWCP to evaluate the medical evidence and determine whether he has met his burden of proof to establish a medical condition causally related to the accepted August 8, 2018 employment incident.[15] Following any further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that the employment incident occurred in the performance of duty on August 8, 2018, as alleged. It further finds that the case is not in posture for decision with regard to causal relationship between his medical condition(s) and the accepted August 8, 2018 employment incident.[16]

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[12] *Supra* note 10; *see also M.T.,* Docket No. 17-1934 (issued September 19, 2018).

[13] *S.S.*, Docket No. 18-1456 (issued July 3, 2019); *C.V.*, Docket No. 15-0615 (issued September 13, 2016).

[14] *D.C.,* Docket No. 19-0716 (issued September 13, 2019); *M.D.,* Docket No. 18-1365 (issued March 12, 2019).

[15] *D.C., id.*; *A.R.,* Docket No. 1800924 (issued August 13, 2019); *Constance G. Patterson,* 41 ECAB 206 (1989); *Thelma S. Buffington,* 34 ECAB 104 (1982).

[16] The Board notes that record contains a Form CA-16 signed by an employing establishment official. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/treatment regardless of the action taken on the claim. *C.W.*, Docket No. 17-1293 (issued February 12, 2018); *Tracy P. Spillane,* 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c).

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2018 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: January 6, 2020
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