



## ISSUE

The issue is whether appellant has met his burden of proof to establish an injury in the performance of duty on February 8, 2019, as alleged.

## FACTUAL HISTORY

On March 1, 2019 appellant, then a 60-year-old licensed practical nurse, filed a traumatic injury claim (Form CA-1) alleging that on February 8, 2019 he injured his chest, right arm, and both knees while in the performance of duty. The injury reportedly occurred on the sidewalk from the parking area to the employing establishment entrance due to “ice on [the] sidewalk.” Appellant described his injuries as bruising abrasions on both knees and right hand. He also reported chest and right arm pain. On the reverse side of the claim form, the employing establishment indicated that appellant was injured in the performance of duty. It also noted that he received medical treatment on February 8, 2019. Appellant stopped work on February 8, 2019 and returned to work on February 19, 2019.

In a February 12, 2019 note, Dr. Peter E. Clemens, an emergency medicine specialist with Baptist Health Madisonville Emergency Department, advised that appellant had been seen that day and could return to work on February 18, 2019. He diagnosed chest contusion. Dr. Clemens also precluded heavy lifting or repetitive motion until appellant was cleared by his personal physician.

On February 14, 2019 the employing establishment offered appellant a full-time, limited-duty assignment effective February 17, 2019, which he accepted. The limited-duty assignment noted Dr. Clemens’ restrictions of “no heavy lifting or repetitive motion....”

On March 7, 2019 appellant was seen by Charlie C. Davis, an advance practice registered nurse. He was diagnosed with nonunion of sternum after sternotomy. In a separate note of the same date, Mr. Davis advised that appellant should remain off work until April 7, 2019 to promote healing and stabilization of his sternum from previous fall.

In an April 17, 2019 note, Mr. Davis indicated that appellant should remain off work until May 17, 2019 due to malunion of his sternum.

In an April 25, 2019 development letter, OWCP informed appellant that his claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and that continuation of pay was not controverted by the employing establishment, and thus limited expenses had been authorized. However, a formal decision was now required. OWCP advised appellant that the evidence submitted was insufficient to establish that he actually experienced the incident alleged to have caused the injury. It requested additional factual and medical evidence and provided a questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary evidence.

In April 17, 2019 progress notes, Mr. Davis noted that appellant had a history of coronary artery disease and had undergone quadruple coronary artery bypass graft in November 2016. Appellant subsequently developed sternal instability, and in December 2017 he underwent sternal revision with plating. Mr. Davis noted that appellant was currently being seen for nonunion of

sternum. Appellant reported that after visiting the emergency department for a fall in which his sternum made first contact with the ground (followed by his head), a chest x-ray revealed fracture of sternal plating at the base of the sternum. Mr. Davis noted complaints of significant pain and a reported inability to perform job duties effectively due to pain. He also noted that appellant had been off work for six weeks and felt unable to return to work due to pain intolerance. Mr. Davis indicated that appellant was presently following up with the cardiothoracic and vascular surgery practice to discuss a treatment plan regarding his broken hardware and his unstable sternum.

An April 22, 2019 attending physician's report (Form CA-20) signed by Mr. Davis noted a February 8, 2019 date of injury with a history of a fall resulting in fracture of sternal hardware and sternal malunion. He diagnosed malunion of sternum and fractured hardware. However, the portion of the form report regarding causal relationship remained blank. Additionally, Mr. Davis noted that appellant was totally disabled from work from February 12 through May 19, 2019.

By decision dated May 28, 2019, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the event(s) occurred as described. It noted that he did not respond to the April 25, 2019 factual questionnaire, and therefore, had not provided a detailed description as to how his injury occurred. OWCP concluded, therefore, that the requirements had not been met to establish that appellant sustained 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> 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

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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).

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 burden of proof includes the submission of a detailed description of the employment factor(s) he or she believes caused or adversely affected a condition for which compensation is claimed.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty on February 8, 2019, as alleged.

On his Form CA-1, appellant noted that on February 8, 2019 he sustained injuries to his chest, right arm/hand, and both knees due to "ice on [the] sidewalk." At the time, he did not provide any additional information about what he was doing outside on the parking area sidewalk or how he was injured. The Board notes that appellant's limited description of the traumatic incident fails to provide sufficient detail to determine the circumstances surrounding his injury.<sup>11</sup> The alleged mechanism of injury could not be determined as essential information was not provided.<sup>12</sup>

In its April 25, 2019 development letter, OWCP advised appellant of the factual information needed to establish his claim and attached a questionnaire regarding the circumstances surrounding the alleged traumatic injury for his completion. Appellant did not respond to OWCP's request for additional factual information.<sup>13</sup> Accordingly, the Board finds that he has not presented a clear factual statement identifying specific employment factors or conditions alleged to have caused or contributed to his claimed medical condition, and therefore, has not met his burden of proof.<sup>14</sup>

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.

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<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> *P.T.*, Docket No. 14-0598 (issued August 5, 2014).

<sup>11</sup> *K.S.*, Docket No. 17-2001 (issued March 9, 2018).

<sup>12</sup> *See R.V.*, Docket No. 17-1286 (issued December 5, 2017).

<sup>13</sup> *K.S.*, *supra* note 11; *see also K.W.*, Docket No. 16-1656 (issued December 15, 2016).

<sup>14</sup> *See D.C.*, Docket No. 18-0082 (issued July 12, 2018); *D.D.*, 57 ECAB 734 (2006).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty on February 8, 2019, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 28, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 14, 2020  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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