

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>T.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-0027</b>
	)	<b>Issued: October 6, 2020</b>
<b>U.S. POSTAL SERVICE, BAY VALLEY</b>	)	
<b>DISTRICT POST OFFICE, Oakland, CA,</b>	)	
<b>Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 18, 2020 appellant filed a timely appeal from a September 5, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the September 5, 2019 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.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on July 6 or 13, 2019, as alleged.

## FACTUAL HISTORY

On July 19, 2019 appellant, then a 70-year-old motor vehicle operator, filed a claim for a traumatic injury (Form CA-1) alleging that on July 13, 2019 he injured his head, neck, right hand, back, shoulder, and hip when he stepped out of his truck and slipped and fell on the ground while in the performance of duty. He did not stop work. On the reverse side of the Form CA-1, appellant's supervisor, F.A., noted inconsistencies in the date appellant provided for the injury.

In a statement dated July 18, 2019, appellant indicated that he fell from his truck at 8:15 a.m. on July 6, 2019 while waiting for Express Mail at stall number 25. He believed that camera 32 had a record of the incident. Appellant noted that he developed bruising after two days and sought medical treatment.

In a development letter dated July 31, 2019, OWCP advised appellant of the deficiencies of his claim and instructed him as to the factual and medical evidence necessary to establish his claim. It asked him to complete a questionnaire to provide further details regarding the circumstances of the claimed July 13, 2019 employment incident. OWCP afforded appellant 30 days to submit the necessary evidence.

The employing establishment controverted appellant's claim in an August 3, 2019 letter. A supervisor explained that, upon investigation into the circumstances surrounding the claim, it found inconsistencies in the date appellant provided for the injury. He noted that on the Form CA-1 appellant alleged that he was injured on July 13, 2019; however, in a July 18, 2019 statement, he reported injuring himself on July 6, 2019. The supervisor further noted that appellant failed to report or notify management that he injured himself on July 13, 2019 and continued to perform all his duties and functions without complaints of pain or discomfort.

On August 23, 2019 appellant was treated by Dr. Tram Le, a chiropractor, for right neck and shoulder pain. He reported that on July 13, 2019 "he fell off a truck onto his right side." Appellant complained of pain in the right shoulder, neck, and right lower back. Findings on examination revealed mild tenderness of the anterior deltoid, supraspinatus, upper trapezius, scapulae, cervical paraspinals, and lumbosacral joint. Dr. Le performed therapeutic exercise, manual therapy, and electrical stimulation to the affected areas. He diagnosed segmental and somatic dysfunction of the lumbar region, cervical sprain, sprain of the right shoulder, and lumbosacral dysfunction.

By decision dated September 5, 2019, OWCP denied appellant's claim, finding that it had not been established that the incident occurred as alleged. It noted that he gave inconsistent statements as to when his fall occurred, *i.e.*, July 6, 2019 *versus* July 13, 2019. 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 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> 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, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>9</sup>

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 or her subsequent course of action.<sup>10</sup> The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence that cast serious doubt upon the validity of the claim. 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 serious doubt on an employee's statements in determining whether a *prima facie* case has been established. An employee's statements

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<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. Ellyet*, 41 ECAB 992 (1990).

<sup>7</sup> *R.B.*, Docket No. 17-2014 (issued February 14, 2019); *B.F.*, Docket No. 09-0060 (issued March 17, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>8</sup> *S.F.*, Docket No. 18-0296 (issued July 26, 2018); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

<sup>9</sup> *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 7.

<sup>10</sup> *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

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.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury in the performance of duty on July 13, 2019, as alleged.

Appellant has not established the factual component of his claim as he has insufficiently explained when the claimed injury occurred.<sup>12</sup> In his July 19, 2019 Form CA-1, he indicated that on July 13, 2019 he stepped out of his truck and slipped and fell to the ground injuring his head, neck, right hand, back, shoulder, and hip. However, in his narrative statement dated July 18, 2019, appellant indicated that he fell from his truck at 8:15 a.m. on July 6, 2019 while waiting for Express Mail. He indicated that after two days he developed bruising and sought medical treatment.

In its August 3, 2019 letter of controversion, an employing establishment supervisor noted the inconsistencies in the date appellant provided for the injury in his Form CA-1 and in his July 18, 2019 statement. Further, he asserted that appellant failed to report or notify management that he injured himself on July 13, 2019 and continued to perform all his duties and functions without any complaints of pain or discomfort. Appellant did not provide a response to these allegations.

The Board finds that appellant's date of the incident as noted on the Form CA-1 of July 13, 2019 is inconsistent with the date he provided in his July 18, 2019 narrative statement that he fell on the morning of July 6, 2019 and developed bruising two days later. Appellant's varying descriptions of what occurred and how do not establish a singular account of the mechanism of injury.<sup>13</sup> Further, the history of injury he related to his medical provider further detailed inconsistent descriptions of the mechanism of injury. Dr. Le's August 23, 2019 report related that appellant fell off a truck on July 13, 2019. The medical records therefore reflect that appellant did not report a consistent history of injury to his medical provider.<sup>14</sup> Thus, the Board finds that he has not established that he sustained an injury in the performance of duty either on July 6 or 13, 2019 as alleged because he did not submit sufficient evidence to establish that he actually experienced the incident at the time, place, and in the manner alleged.<sup>15</sup>

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<sup>11</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *D.B.*, *supra* note 9.

<sup>12</sup> *See E.C.*, Docket No. 19-0943 (issued September 23, 2019).

<sup>13</sup> *See id.*

<sup>14</sup> *See F.H.*, Docket No. 19-1209 (issued November 20, 2019).

<sup>15</sup> *See supra* note 12.

As appellant has not provided a consistent description of the alleged employment incident and the mechanism by which he sustained an injury, the Board finds that he has not met his burden of proof.<sup>16</sup>

As appellant has not met his burden of proof to establish that an incident occurred in the performance of duty, as alleged, it is unnecessary to address the medical evidence of record regarding causal relationship.<sup>17</sup>

On appeal appellant disagreed with OWCP's decision and asserted that he fell in the employing establishment's truck parking lot. He further indicated that he was responsible for a medical bill from Concentra resulting from the injury. However, as explained above, the case record does not include a consistent history of injury to establish that he experienced the incident at the time, place, and in the manner alleged.

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 a traumatic injury in the performance of duty on July 6 or 13, 2019, as alleged.

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<sup>16</sup> *H.D.*, Docket No. 15-1698 (issued May 4, 2016).

<sup>17</sup> *J.C.*, Docket No. 19-0542 (issued August 14, 2019); *see M.P.*, Docket No. 15-0952 (issued July 23, 2015); *Alvin V. Gadd*, 57 ECAB 172 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 5, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 6, 2020  
Washington, DC

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

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

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