United States Department of Labor
Employees' Compensation Appeals Board

R.E., Appellant	)	
and	)	**Docket No. 19-1749**
	)	**Issued: September 9, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Roanoke, VA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On August 19, 2019 appellant, through counsel, filed a timely appeal from a June 5, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' 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.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id*.; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish that a right ankle injury occurred in the performance of duty on July 9, 2018 as alleged.

FACTUAL HISTORY

On September 13, 2018 appellant, then a 33-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on July 9, 2018 at 10:30 a.m. he sprained his right ankle when walking on a walkway while in the performance of duty. He explained that he stepped on an unsecured stone, which flipped and caused him to roll his ankle and fall to the ground. Appellant noted that he was in pain and tried to walk it off, but after the pain continued, he called his immediate supervisor to report the injury. On the reverse side of the claim form, his supervisor acknowledged that appellant was in the performance of duty when the injury occurred and provided a statement explaining that he stepped on a stone step that rocked over and caused him to roll his ankle. Appellant stopped work on September 13, 2018.

In a September 13, 2018 occupational medicine report of injury, Dr. Joseph Coates, Board-certified in family medicine, noted that appellant rolled his right ankle while delivering mail on July 9, 2018. He diagnosed a right anterior tibialis sprain. In an attending physician's report (Form CA-20) of even date, Dr. Coates diagnosed a right ankle sprain and right anterior tibialis sprain as a result of rolling his ankle in July 2018. He checked a box marked "Yes" indicating that appellant's condition was caused or aggravated by the employment activity described to him. In a September 13, 2018 duty status report (Form CA-17), Dr. Coates provided work restrictions in relation to appellant's injuries.

In a September 14, 2018 medical note, Dr. Marc Platt, a Board-certified podiatrist, discussed the pain appellant experienced in his lower leg and ankle. He diagnosed a moderate right ankle sprain with a possible syndesmotic injury. Dr. Platt provided a sports ankle brace to support his ankle and recommended that he remain out of work for an additional two and a half weeks as he underwent physical therapy. In a medical note of even date, he advised that appellant remain out of work due to the July 9, 2018 right ankle and lower leg injury.

Appellant also submitted a position description detailing his duties and responsibilities as a city carrier.

In a development letter dated October 2, 2018, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion to provide further details regarding the circumstances of the claimed July 9, 2018 employment incident. OWCP afforded appellant 30 days to submit the necessary evidence. Appellant did not respond to the development questionnaire.

OWCP received a September 13, 2018 progress note from Dr. Coates in which he discussed appellant's July 9, 2018 right ankle injury and noted that he experienced immediate pain and swelling as a result. Appellant informed him that he had rolled his right ankle in July while delivering mail when he stepped off a porch onto an unsecured rock slate, that he kept on working,

but it had started to cause him a lot of pain. Dr. Coates noted that he indicated that he had no prior problems with his ankle. He diagnosed right ankle pain due to a work-related injury and opined that he likely suffered an ankle sprain two months prior.

In a September 13, 2018 diagnostic report, Dr. Ricardo Riego de Dios, a Board-certified diagnostic radiologist, performed an x-ray of appellant's right ankle which revealed no evidence of an effusion, fracture, or dislocation.

In a September 14, 2018 medical report, Dr. Platt recounted appellant's history of injury to his right ankle on July 9, 2018 when he was walking on the job and stepped on a slate rock that moved, causing him to slip and twist his ankle. Appellant indicated that he immediately called the employing establishment, informed them of his injury, and was told that, if he came back without completing his route, he would be fired. He reported that he therefore stayed on his route. Upon evaluation, Dr. Platt diagnosed a moderate right ankle sprain and provided him with a plan of treatment for his injury.

In a September 24, 2018 medical report, Anna Weaver, a nurse practitioner, and Nancy Huffman, a registered nurse, noted that appellant injured his right ankle on July 9, 2018 while he was at work when he stepped on slate stone and his ankle rotated. It was also noted that appellant had pain and swelling since his injury.

In a September 27, 2018 physical therapy note, Ashley Kopso, a physical therapist, discussed appellant's progress with treatment in relation to his moderate right ankle sprain and related symptoms.

In October 5, 2018 medical reports, Dr. Platt noted that he had reevaluated appellant's right ankle and his injury had improved with physical therapy and ice. He recommended that appellant continue his physical therapy, continue to use his ankle brace, and advised that he remain out of work until he was to be reevaluated at the end of October.

By decision dated November 5, 2018, 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 explained that he had not provided additional factual information with regard to the immediate effect of his injury, what he did immediately after his injury, and whether he had any other conditions or disabilities prior to the date of injury. OWCP noted that appellant had not provided information regarding the late submission of his claim. It also found that he had not submitted medical evidence to establish a diagnosed medical condition causally related to the claimed work injury or event.

OWCP continued to receive medical evidence. Physical therapy notes dated from October 1 to 10, 2018, detailed appellant's treatment for his moderate right ankle sprain.

On April 19, 2019 appellant, through counsel, requested reconsideration of OWCP's November 5, 2018 decision. Attached to his reconsideration request, he submitted a series of medical reports dated from November 1 to December 12, 2018 from Dr. Platt. In his reports, Dr. Platt noted treatment for appellant's right ankle injury. These notes indicated that appellant informed Dr. Platt that his supervisor stated that he needed to be 100 percent healed before he could return to work without restrictions. An attached November 27, 2018 magnetic resonance

imaging scan of appellant's right ankle revealed synovitis of the posterior tibial tendon and peroneus longus tendon. In his December 12, 2018 report, Dr. Platt opined that appellant would be able to return to work without restrictions as of that day.

By decision dated June 5, 2019, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 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.[7] 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.[8] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[9]

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.[10] The employee has not met his burden of proof in establishing the occurrence of an injury when

[3] *Supra* note 1.

[4] *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).

[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] *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).

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

[8] *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *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.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

there are inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[11] 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* case has been established.[12] 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.[13]

ANALYSIS

The Board finds that appellant has met his burden of proof to establish that the July 9, 2018 employment incident occurred in the performance of duty, as alleged.

Appellant filed a traumatic injury claim alleging that he sustained a right ankle injury on the morning of July 9, 2018 when he rolled his ankle and fell to the ground while in the performance of duty. He has provided a single account of the mechanism of injury which has not been refuted by any evidence of record. 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 or persuasive evidence.[14] On the reverse side of his claim form, appellant's supervisor acknowledged that the alleged injury occurred in the performance of duty and indicated that his knowledge of the facts about the injury agreed with appellant's statement that he rolled his ankle when he stepped on a stone step that rocked over causing him to fall to the ground. Contemporaneous medical reports from Drs. Coates and Platt consistently noted that appellant was treated for a work-related right ankle injury that had been sustained on July 9, 2018 when he rolled his ankle on a stone while delivering mail. The Board therefore finds that appellant has established that the July 9, 2018 employment incident occurred in the performance of duty, as alleged.

As appellant has established that the July 9, 2018 employment incident occurred in the performance of duty as alleged, the question becomes whether this incident caused an injury.[15] As OWCP found that appellant had not established fact of injury, it did not evaluate the medical evidence. Thus, the Board will set aside OWCP's June 5, 2019 decision and remand the case for consideration of the medical evidence of record.[16] After such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met his burden of proof to establish an injury causally related to the accepted July 9, 2018 employment incident.[17]

[11] *See E.C.*, Docket No. 19-0943 (issued September 23, 2019).

[12] *P.M.*, Docket No. 15-1338 (issued September 13, 2016).

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

[14] *Id*.

[15] *Id*.

[16] *S.M.*, Docket No. 16-0875 (issued December 12, 2017).

[17] *P.S.*, Docket No. 19-1818 (issued April 14, 2020).

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that the July 9, 2018 employment incident occurred in the performance of duty, as alleged. The Board further finds that this case is not in posture for decision, however, with regard to whether he has established an injury causally related to the accepted July 9, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 5, 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: September 9, 2020
Washington, DC

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

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

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