

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

M.E., Appellant	)	
	)	
and	)	Docket No. 20-1336
	)	Issued: July 2, 2021
U.S. POSTAL SERVICE, POST OFFICE,	)	
Millbrae, CA, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 25, 2020 appellant filed a timely appeal from a June 11, 2020 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 the case.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on November 11, 2014, as alleged.

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

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On October 20, 2017 appellant, then a 54-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he injured his left knee on November 11, 2014 "at a tree root in front of a house while delivering mail in the rain and dark" while in the performance of duty. The employing establishment controverted the claim asserting that his supervisor was unaware of the incident.

In a development letter dated October 26, 2017, OWCP informed appellant that the factual and medical evidence was insufficient to establish his claim. It advised him of the type of evidence necessary to establish his claim and provided a questionnaire for his completion regarding the circumstances of the injury. OWCP afforded appellant 30 days to respond.

In another letter also dated October 26, 2017, OWCP requested that the employing establishment submit a statement from appellant's supervisor or a knowledgeable official confirming that appellant was on duty and delivered mail on November 11, 2014.

On November 2, 2017 the employing establishment submitted a statement confirming that appellant "was signed in for duty and delivering mail on November 11, 2014."

In an April 13, 2015 report, Dr. Alberto Bolanos, a Board-certified orthopedic surgeon, described appellant's February 17, 2015 left knee magnetic resonance imaging scan findings. His diagnoses included left knee medial meniscal tear and chondromalacia of the trochlea. Dr. Bolanos performed left knee meniscus arthroscopic repair and chondroplasty on April 13, 2015. In a follow-up report dated June 11, 2015, he indicated that appellant was still experiencing some pain in his left knee, but less than previously.

OWCP received disability notes signed by Dr. Bolanos indicating that appellant was seen on December 16, 2014 and February 13 and June 11, 2015.

By decision dated December 5, 2017, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the November 11, 2014 employment incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 19, 2017 appellant requested reconsideration. In an accompanying statement, he maintained that he had immediately reported his injury to his supervisor who asked him to continue working and finish delivering the mail. Appellant indicated that he had no choice, but to continue to work, and had not gone to the physician that day because he had to pick up his children at school. He indicated that he started having severe pain, but his supervisor rejected his

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<sup>2</sup> Docket No. 19-1298 (issued March 18, 2020); Docket No. 18-0553 (issued November 5, 2018).

requests for days off. Appellant alleged that his supervisor had not documented his injury when he reported it. He also indicated that he did not know the law relating to the claims process.

By decision dated January 3, 2018, OWCP denied appellant's request for reconsideration.

Appellant filed an appeal with the Board on January 19, 2018. By decision dated November 5, 2018, the Board affirmed OWCP's December 5, 2017 and January 3, 2018 decisions.<sup>3</sup> The Board found that appellant had not met his burden of proof to establish a traumatic injury in the performance of duty on November 11, 2014. The Board explained that his description of the traumatic incident was vague and failed to provide any specific detail regarding the manner in which he sustained his claimed injury. The Board further found that OWCP properly denied appellant's request for reconsideration of the merits of his claim.

On April 5, 2019 appellant requested reconsideration. He submitted additional evidence and copies of evidence previously of record.

Newly submitted evidence consisted of an April 12, 2015 report from Dr. Bolanos, who indicated that appellant would be undergoing left knee meniscectomy surgery on April 13, 2015.

Appellant also submitted a March 12, 2019 letter that he wrote to an employing establishment supervisor asking for confirmation that he reported the November 2014 injury.

In a notarized statement dated March 15, 2019, appellant explained that while delivering mail on November 11, 2014 he injured his left knee on a tree that was newly cut and a branch half cut, close to a walkway in front of a house. He noted that he had reported the incident to his supervisor, but was ordered to continue working. Appellant further noted that he had not sought medical care until that injury became severe, and this led to his April 13, 2015 surgery.

By decision dated May 7, 2019, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant merit review.

On May 23, 2019 appellant appealed to the Board. By decision dated March 18, 2020,<sup>4</sup> the Board found that OWCP improperly denied his request for reconsideration of the merits of his claim as the submitted evidence was new and relevant. The Board remanded the case for further consideration of the merits of appellant's claim to be followed by an appropriate decision.

By decision dated June 11, 2020, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</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

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<sup>3</sup> *Id.* at Docket No. 18-0553.

<sup>4</sup> *Supra* note 2 at Docket No. 19-1298.

<sup>5</sup> *Supra* note 1.

United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>6</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>7</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>8</sup>

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.<sup>9</sup> 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.<sup>10</sup> The second component is whether the employment incident caused a personal injury.<sup>11</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>12</sup> The employee has not met his or her burden of proof in establishing the occurrence of an injury when there are inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>13</sup> 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. 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.<sup>14</sup>

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<sup>6</sup> See *L.F.*, Docket No. 19-1275 (issued October 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *M.W.*, Docket No. 20-1489 (issued March 29, 2021); *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>8</sup> *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).

<sup>9</sup> *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

<sup>10</sup> See *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143(1989).

<sup>11</sup> *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>12</sup> See *M.W.*, *supra* note 7; *M.F.*, *supra* note 10; *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

<sup>13</sup> See *V.J.*, Docket No. 19-1600 (issued March 13, 2020); *E.C.*, Docket No. 19-0943 (issued September 23, 2019).

<sup>14</sup> See *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

## ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury in the performance of duty on November 11, 2014, as alleged.

Initially, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of the December 5, 2017 OWCP merit decision, which was considered by the Board in its November 5, 2018 merit decision. Findings made in prior Board decisions are *res judicata*, absent further merit review by OWCP under section 8128 of FECA.<sup>15</sup>

The Board finds that appellant has not established the factual component of his claim, as he has insufficiently explained how the injury occurred on November 11, 2014 and why he waited until October 20, 2017, to report the injury.

On reconsideration, appellant submitted a notarized statement dated March 15, 2019, relating that while delivering mail on November 11, 2014 he injured his left knee on a tree that was newly cut with a branch half cut, close to a walkway in front of a house. However, as the Board explained in its November 5, 2018 decision, to meet his burden of proof he was required to provide a narrative statement relating the circumstances of the incident, with specific detail regarding the mechanism and manner in which he sustained his injury.<sup>16</sup> Appellant's notarized statement of March 15, 2019, however, only vaguely noted that he injured his knee on a newly cut tree branch. It did not describe any detail of the mechanism by which he sustained injury. Furthermore, while he indicated that he reported the injury to his supervisor on the date it occurred, the employing establishment controverted the claim and indicated that appellant's supervisor was not aware of the incident. OWCP noted that appellant submitted a March 12, 2019 letter to an employing establishment supervisor asking for confirmation that he reported the November 2014 injury, but he did not submit a response from the employing establishment. It also noted that his December 17, 2017 statement indicated that the delay in filing the claim occurred because he was unfamiliar with the claims process, however, he had filed two prior claims under OWCP File No. xxxxxx320, for a dog bite on June 20, 2016 and OWCP File No. xxxxxx739, for an occupational disease. These circumstances, which include vague descriptions of the incident, late notification of injury, and lack of confirmation of injury cast serious doubt on the validity of the claim.<sup>17</sup>

OWCP also received an April 12, 2015 report from Dr. Bolanos, who indicated that appellant would be having left knee meniscectomy surgery on April 13, 2015. However, this report is insufficient to establish the factual component of appellant's injury, as there was no indication in this report as to how the injury occurred. Appellant's failure to provide a history of injury as a component of this medical report, further casts doubt that the traumatic injury occurred in the performance of duty as alleged.<sup>18</sup>

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<sup>15</sup> See *A.E.*, Docket No. 20-0259 (issued April 28, 2021); *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

<sup>16</sup> *Supra* note 2.

<sup>17</sup> See *V.J.*, *supra* note 13; *E.C.*, *supra* note 13.

<sup>18</sup> See *S.Z.*, Docket No. 19-1125 (issued October 22, 2020).

As the evidence of record is insufficient to establish that the incident occurred as alleged, the Board finds that appellant has not met his burden of proof.

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 November 11, 2014, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 11, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 2, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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