

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

_____)	
T.C., Appellant)	
)	
and)	Docket No. 20-1513
)	Issued: June 3, 2021
DEPARTMENT OF HOMELAND SECURITY,)	
CUSTOMS & BORDER PROTECTION,)	
Yuma, AZ, Employer)	
_____)	

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 August 5, 2020 appellant filed a timely appeal from a June 25, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on April 22, 2020, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the June 25, 2020 decision, OWCP received additional evidence. 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.*

FACTUAL HISTORY

On May 13, 2020 appellant, then a 32-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on April 22, 2020 he sustained a left wrist injury when he fell from an all-terrain vehicle (ATV) and landed on his left wrist while in the performance of duty. On the reverse side of the claim form C.F., an employing establishment supervisor, asserted that appellant was not in the performance of his duties at the time of the injury because he fell off his ATV while “pushing a sign.” Appellant did not stop work.

In a May 13, 2020 development letter, OWCP informed appellant that it had received no evidence in support of his traumatic injury claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP also requested a narrative medical report from appellant’s treating physician containing a detailed description of findings and a diagnosis, explaining how his work activities caused, contributed to, or aggravated his medical conditions. It afforded him 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated June 25, 2020, OWCP denied appellant’s claim, finding that he had not established the factual component of his claim, as he had not responded to the May 13, 2020 development letter. 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 FECA³ has the burden of proof to establish the essential elements of his or her claim, including 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,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 first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the

³ *Supra* note 1.

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁸ In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury in the performance of duty on April 22, 2020, as alleged.

In his Form CA-1, appellant indicated that on April 22, 2020 he injured his left wrist when he fell off his ATV while in the performance of duty. He did not submit a detailed account of the alleged injury or any additional corroborating factual evidence describing how he sustained an injury on April 22, 2020. The Board has found that such a vague recitation of facts does not support a claimant's allegation that a specific event occurred to cause a work-related injury.¹⁰

OWCP, in its May 13, 2020 development letter, informed appellant of the type of factual and medical evidence needed to establish his traumatic injury claim. It requested that he complete an attached questionnaire and provide a detailed factual description of the alleged employment incident. Appellant, however, did not respond to OWCP's development letter. He neither presented evidence regarding the specific mechanism of injury, as required in a claim for traumatic injury, nor did he allege that he experienced a specific event, incident, or exposure at a definite time, place, and in a definite manner.¹¹

As there is no evidence of record to substantiate an injury in the performance of duty on April 22, 2020, 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.

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *S.W.*, Docket No. 17-0261 (issued May 24, 2017).

⁹ *Betty J. Smith*, 54 ECAB 174 (2002).

¹⁰ *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *M.B.*, Docket No. 11-1785 (issued February 15, 2012).

¹¹ *Id.*; see also *Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a traumatic injury in the performance of duty on April 22, 2020, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the June 25, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 3, 2021
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