

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

M.W., Appellant)	
)	
and)	Docket No. 20-1489
)	Issued: March 29, 2021
DEPARTMENT OF THE NAVY, NAVAL)	
FACILITIES ENGINEERING, Washington, DC,)	
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 6, 2020 appellant filed a timely appeal from a July 22, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees'

¹ Appellant submitted a timely oral argument request before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, he asserted that oral argument should be granted because a supervisor allegedly falsified an injury report to conceal his absence from duty. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

Compensation Act² and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUE

The issue is whether appellant has met his burden of proof to establish that a traumatic incident occurred in the performance of duty on April 28, 2020, as alleged.

FACTUAL HISTORY

On June 10, 2020 appellant, then a 57-year-old boiler plant operator, filed a traumatic injury claim (Form CA-1) alleging that on April 28, 2020 he injured his left knee when he struck it on a pipe while in the performance of duty. He also alleged a subsequent occupational right ankle sprain while using a cane from physical therapy on an unspecified date. On the reverse side of the claim form appellant's supervisor checked a box marked "Yes" to indicate his belief that appellant was injured while in the performance of duty, but noted that he had been unaware of appellant's participation in physical therapy or that he ambulated with a cane while at work. Appellant stopped work on May 12, 2020.

On June 10, 2020 OWCP received a May 26, 2020 authorization for examination and/or treatment (Form CA-16) completed by the employing establishment.

In a development letter dated June 15, 2020, 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 attached a questionnaire seeking a full description of the events and circumstances surrounding the alleged April 28, 2020 employment incident. OWCP afforded him 30 days to provide the necessary information.

In response, appellant provided a June 17, 2020 telemedicine report by Dr. Idris Amin, a doctor Board-certified in physiatry and sports medicine, who related appellant's account of an April 21, 2020 left knee injury while at work. He noted appellant's complaints of left knee pain, swelling, and instability. Dr. Amin also noted that appellant participated in physical therapy and that his therapist prescribed crutches due to left knee instability. On visual examination, he observed swelling of the left knee, extension limited to zero degrees, and flexion limited to 100 degrees. Dr. Amin recommended over-the-counter medication and ordered an imaging study.

In a report dated June 19, 2020, Dr. Emily Jo Durance, a podiatrist, noted appellant's account of an April 21, 2020 occupational left knee injury when he tripped on his cane on April 28, 2020, and an April 29, 2020 injury to when he twisted his right ankle on April 29, 2020.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the July 22, 2020 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.*

causing a right ankle sprain. She diagnosed a right ankle sprain with edema and held appellant off work. Dr. Durance prescribed a brace.

A June 25, 2020 magnetic resonance imaging (MRI) scan of the left knee demonstrated quadriceps tendinopathy with a partial tear, focal full-thickness articular cartilage loss on the median patellar surface, trace suprapatellar joint effusion, moderate suprapatellar soft tissue edema, and moderate edema in the patella likely from a prior contusion.

Appellant also provided physical therapy treatments notes and appointment slips dated from June 23 through July 16, 2020. He filed claims for compensation (Form CA-7) for work absences from June 20 through July 18, 2020.

By decision dated July 22, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as he described. It noted that he had not completed its June 15, 2020 development questionnaire or provided information clarifying the alleged April 28, 2020 employment incident. Additionally, appellant indicated to Dr. Amin that the injury occurred on April 21, 2020, which was inconsistent with the April 28, 2020 date of injury noted on his claim form. 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 FECA⁴ 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,⁵ 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.⁶ 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.⁷

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.⁸

⁴ *Supra* note 2.

⁵ *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).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *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).

⁸ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

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, and place, and in the manner alleged.⁹ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.¹⁰

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.¹¹ The employee has not met his 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.¹² 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.¹³

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 28, 2020, as alleged.

Appellant has not established the factual component of his claim as he has insufficiently explained how and where the claimed injury occurred.¹⁴ In his June 10, 2020 Form CA-1, he indicated that he injured his left knee on April 28, 2020, when he struck it against a pipe, and sprained his right ankle on an unspecified date when he tripped on a cane provided by a physical therapist. (RD 6/10/20) However, on June 17, 2020, he told Dr. Amin that he had been injured on April 21, 2020 in an unspecified work incident, and on June 19, 2020, explained to Dr. Durance that he injured his left knee while at work on April 21, 2020, and sprained his right ankle when he tripped on his cane on April 28, 2020 and again twisted his right ankle on April 29, 2020.

The Board finds that appellant's description of the incident in his Form CA-1 is inconsistent with his statements to his treating physicians. Appellant's varying descriptions of the

⁹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹¹ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

¹² *See V.J.*, Docket No. 19-1600 (issued March 13, 2020); *E.C.*, Docket No. 19-0943 (issued September 23, 2019).

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

¹⁴ *See supra* note 12.

date and circumstances of the claimed injury do not establish a singular account of the mechanism of injury.¹⁵ Further, the history of injury he related to his medical providers further detailed inconsistent descriptions of the mechanism of injury. 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.¹⁶

As appellant has not met his burden of proof to establish that the April 28, 2020 incident occurred in the performance of duty, as alleged, it is unnecessary to address the medical evidence of record regarding causal relationship.¹⁷

On appeal, appellant contends that an employing establishment supervisor had falsified a statement to conceal that he had been sleeping while on duty. The Board notes, however, that appellant did not specify the statement with which he disagreed or provide evidence that it was erroneous.

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 10.607.¹⁸

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 28, 2020 as alleged.

¹⁵ *Id.*

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

¹⁷ *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).

¹⁸ The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *S.P.*, Docket No. 19-1904 (issued September 2, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 29, 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