

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

M.V., Appellant)	
)	
and)	Docket No. 19-1040
)	Issued: August 12, 2022
DEPARTMENT OF AGRICULTURE, U.S.)	
FOREST SERVICE, PINE CANYON STATION,)	
Santa Maria, CA, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 10, 2019 appellant filed a timely appeal from November 14, 2018 and February 28, 2019 merit decisions 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on August 28, 2018, as alleged.

FACTUAL HISTORY

On August 28, 2018 appellant, then a 27-year-old forestry technician, filed a traumatic injury claim (Form CA-1) alleging that on that date he experienced stroke-like symptoms while in the performance of duty. He recounted that he was not feeling well and that a fellow crew member

¹ 5 U.S.C. § 8101 *et seq.*

noticed that something was wrong with him and called line medics for assistance. Appellant did not stop work. On the reverse side of the claim form, appellant's supervisor indicated that appellant was in the performance of duty at the time of the occurrence and noted that his knowledge of the facts about the injury conformed with appellant's statement.

In an August 28, 2018 transport medical record, appellant was noted to have been initially treated by responding paramedics for neck and head pain. It was explained that he had a three-year history of a hemorrhagic stroke and began experiencing similar stroke-like symptoms that morning.

In an August 28, 2018 emergency room record, appellant was seen by Dr. Robert Donovan, Board-certified in emergency medicine, who noted that appellant had been transferred to emergency care following the onset of a severe headache. Dr. Donovan indicated that appellant was "working at the Donnell Fire," where he had been camping for two days prior and awoke that morning with a right-sided headache and nausea. He explained that appellant had previously experienced a stroke in 2015 with similar symptoms. Dr. Donovan further indicated that computerized tomography (CT) scans of appellant's neck and head were unremarkable and nothing suggested that he experienced a stroke. He diagnosed acute anxiety and an acute headache.

In a development letter dated October 10, 2018, OWCP advised appellant of the factual and medical evidence necessary to establish his claim and provided a factual questionnaire inquiring about the circumstances surrounding his claimed injury for his completion. It afforded him 30 days to provide the necessary information.

In a medical report dated August 29, 2018, Dr. James Jaffe, a Board-certified radiologist, interpreted CT scans of appellant's aortic arch, cervical, and intracranial vascularity which he indicated were normal.

On August 31, 2018 appellant was seen by Cristina Rosales, a physician assistant, for a follow-up appointment. Ms. Rosales diagnosed anxiety and acute headache and reviewed his treatment options. Appellant also resubmitted the August 28, 2018 transportation medical record already of record.

By decision dated November 14, 2018, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the August 28, 2018 employment incident occurred as alleged. It noted that he did not provide a statement explaining how the alleged August 28, 2018 employment injury occurred. As such, OWCP concluded that the requirements had not been met to establish fact of injury as defined by FECA.

On December 3, 2018 appellant requested reconsideration of the November 14, 2018 decision. In support of his request, he resubmitted copies of the August 28, 2018 medical records previously considered by OWCP.

OWCP also received an undated statement from C.R., appellant's coworker. C.R. provided that on August 28, 2018 he noticed that appellant was quiet and was staring off into the distance. He noted that appellant advised that he was feeling "off" and that he was experiencing symptoms similar to a stroke he previously experienced. Upon hearing this, C.R. and his crew began to execute an emergency action plan in order to assist appellant.

By decision dated February 28, 2019, OWCP denied modification of the November 14, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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,³ 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.⁴ 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.⁵

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.⁶ 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.⁷ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁸

ANALYSIS

The Board finds that appellant met his burden of proof to establish a traumatic injury in the performance of duty on August 28, 2018, as alleged.

In his claim form, appellant alleged that he experienced an acute onset of stroke-like symptoms while in the performance of duty on August 28, 2018. On the reverse side of the Form CA-1 appellant's supervisor acknowledged that appellant's injury occurred in the performance of duty and his knowledge of the facts about the injury conformed to the statements of the employee. Additionally, OWCP received a statement from C.R., appellant's coworker, who explained that on August 28, 2018 he noticed appellant was quiet, staring off into the distance, feeling "off" and

² *Id.*

³ *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).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *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).

⁶ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁷ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

experiencing symptoms similar to a stroke. Upon hearing this, C.R. executed an emergency action plan in order to assist appellant.

Further, the history of the employment incident is recorded in the medical evidence of record. Specifically, Dr. Donovan observed in his August 28, 2018 medical report that appellant was “working at the Donnell Fire,” where he had been camping for two days when he woke up experiencing a headache and stroke-like symptoms. The injuries appellant claimed are consistent with the facts and circumstances he recounted, his course of action, and the medical evidence he submitted. The Board, therefore, finds that he has met his burden of proof to establish an employment incident in the performance of duty on August 28, 2018, as alleged.

As appellant has established that the August 28, 2018 employment incident occurred as alleged, the question becomes whether this incident caused a personal injury.⁹ Thus, the Board will set aside OWCP’s February 28, 2019 decision and remand the case for consideration of the medical evidence. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has his burden of proof to establish an injury causally related to the accepted August 28, 2018 employment incident.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a traumatic injury in the performance of duty on August 28, 2018, as alleged. The Board further finds that this case is not in posture for decision regarding whether he has established an injury causally related to the accepted August 28, 2018 employment incident.

⁹ See *B.S.*, Docket No. 19-0524 (issued August 8, 2019); *Willie J. Clements*, 43 ECAB 244 (1991).

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2019 and November 14, 2018 decisions of the Office of Workers' Compensation Programs are reversed. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 12, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

Alec J. Koromilas, Chief Judge, dissenting:

The majority finds that appellant has met his burden of proof to establish that the August 8, 2018 employment incident occurred as alleged. I disagree.

To establish fact of injury, an employee must first submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.¹

In his CA-1 claim form, under “cause of injury,” appellant noted “signs of stroke symptoms” and as to the “nature of the injury” he indicated “not feeling well, crew members noticed something wrong.”

Seeking further information, on October 10, 2018, OWCP advised appellant of the factual and medical evidence necessary to establish his claim and provided a factual questionnaire including specific questions inquiring about the circumstances surrounding his claimed injury for his completion. Appellant did not respond to OWCP’s request for additional factual information.² Instead, OWCP received hospital medical reports indicating normal findings including an August 28, 2018 emergency room report from Dr. Donovan who noted that appellant had been transferred to emergency care following the onset of a severe headache. Dr. Donovan further indicated that computerized tomography (CT) scans of appellant’s neck and head were unremarkable and nothing suggested that he experienced a stroke. He diagnosed acute anxiety and an acute headache.

On November 14, 2018 OWCP denied the claim as appellant had not responded to the request for factual information.

In a request for reconsideration, appellant resubmitted medical records and a statement from a coworker who recounted that appellant was quiet and was staring off into the distance. The coworker noted that appellant advised that he was feeling “off” and that he was experiencing symptoms similar to a stroke he previously experienced.

First, I would find that appellant’s CA-1 contained a limited description, if any, of the traumatic incident which fails to provide sufficient detail to determine the circumstances surrounding his injury.³

Secondly, I would find that the description of the traumatic incident by a coworker is as well imprecise and vague and fails to provide any specific detail or evidence establishing that the August 28, 2018 incident occurred as alleged⁴

¹ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *See D.C.*, Docket No. 18-0082 (issued July 12, 2018); *D.D.*, 57 ECAB 734 (2006).

³ *K.S.*, Docket No. 17-2001 (issued March 9, 2018).

⁴ *See J.B.*, Docket No. 19-1487 (issued January 14, 2020); *W.C.*, Docket No. 18-1651 (issued March 7, 2019); *see also C.M.*, Docket No. 17-0627 (issued June 28, 2017).

In fulfilling its responsibility to develop the claim, OWCP was very clear in its development letter of October 10, 2018 that it required factual information from appellant to make appropriate findings. Appellant did not reply as requested. In response to the initial denial, he again did not respond to the deficiency of the claim, that is, what actually happened on the date of injury. A statement was submitted by a coworker that made a very vague reference to appellant feeling “off” and that he was experiencing symptoms similar to a stroke he previously experienced. Given the type of alleged injury, such statements clearly are insufficient. In fact, they raise more questions regarding appellant’s stroke history which could probably be best answered by appellant. For OWCP to make a determination regarding whether to accept or not accept an incident requires information, and at minimum, the history of the surrounding events. As appellant has made no effort to provide OWCP with same, I must respectfully disagree with the majority finding that an incident occurred for the purposes of FECA

A handwritten signature in black ink, appearing to read "Alec J. Koromilas". The signature is written in a cursive, somewhat stylized font.

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