

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

P.S., Appellant)	
)	
and)	Docket No. 21-0979
)	Issued: February 15, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Phoenix, 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 June 14, 2021 appellant filed a timely appeal from a May 5, 2021 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 February 18, 2020, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the May 5, 2021 decision, OWCP received additional evidence and appellant submitted additional evidence on appeal. 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.*

FACTUAL HISTORY

On March 14, 2021 appellant, then a 59-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that at approximately 6:00 p.m. on February 18, 2020 he injured his head and lower back when he fell into a hole in a yard of a customer while in the performance of duty. He explained that he was using his telephone as a flashlight while carrying a package to a house for delivery. On the reverse side of the claim form, appellant's supervisor checked a box marked "No" in response to whether he was injured in the performance of duty. He further controverted the claim, asserting that appellant had not reported the incident until 13 months later and did not submit any medical documentation. Appellant did not stop work.

In a development letter dated March 29, 2021, 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 factual questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary information. No further evidence was received.

By decision dated May 5, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the February 18, 2020 employment incident occurred as alleged. 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 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 if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of 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

³ *Supra* note 1.

⁴ *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *S.C.*, Docket No. 20-0733 (issued August 3, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

employment incident at the time and 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 or her subsequent course of action.¹⁰ The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence that cast serious doubt upon the validity of the claim. 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.¹¹ 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.¹²

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that a traumatic injury occurred in the performance of duty on February 18, 2020, as alleged.

On March 14, 2021 appellant filed a traumatic injury claim alleging that he injured his head and lower back when he fell into a hole in a customer's yard while in the performance of duty on February 18, 2020. The Board finds that appellant's description of the traumatic incident is imprecise and vague and fails to provide any specific detail or evidence establishing that the February 18, 2020 incident occurred as alleged.¹³ The alleged mechanism of injury could not be determined as essential information was not provided.¹⁴ Furthermore, on the reverse side of the claim form the employing establishment checked a box marked "No" in response to whether he was injured in the performance of duty, noting that appellant failed to report the injury for over a year.

In its March 29, 2021 development letter, OWCP advised appellant of the factual information needed to establish his claim and attached a factual questionnaire regarding the

⁸ *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *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).

¹¹ *J.P.*, Docket No. 21-0310 (issued August 13, 2021); *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

¹² *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹³ *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).

¹⁴ *S.R.*, Docket No. 20-1304 (issued April 8, 2021).

circumstances surrounding the alleged traumatic injury for his completion. However, appellant did not respond within the allotted time period. By failing to respond to the questionnaire, he did not sufficiently explain circumstances surrounding his alleged injury.¹⁵ 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.¹⁶

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 February 18, 2020, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the May 5, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 15, 2022
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

¹⁵ *R.B.*, Docket No. 19-1026 (issued January 14, 2020); *M.S.*, Docket No. 18-0059 (issued June 12, 2019); *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

¹⁶ *See M.E.*, Docket No. 20-1336 (issued July 2, 2021); *V.J.*, Docket No. 19-1600 (issued March 13, 2020); *E.C.*, Docket No. 19-0943 (issued September 23, 2019).