United States Department of Labor
Employees' Compensation Appeals Board

J.T., Appellant	)	
and	)	**Docket No. 20-0713**
	)	**Issued: July 11, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Doylestown, PA, 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, Deputy Chief Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On February 12, 2020 appellant filed a timely appeal from October 21, 2019 and February 10, 2020 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq*.

[2] Appellant submitted a timely request for oral argument. 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 his oral argument request, appellant asserted that oral argument should be granted as he was treated by a licensed practitioner and that is why his claim was denied. The Board, in exercising its discretion, denies his request for oral argument because this matter requires an evaluation of the medical evidence required. As such, the arguments on appeal can be adequately 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.

ISSUE

The issue is whether appellant has established a traumatic injury in the performance of duty on August 13, 2019 as alleged.

FACTUAL HISTORY

On September 3, 2019 appellant, then a 54-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 13, 2019 he injured his knee when he fell into a hole in a lawn while delivering mail. He stopped work on August 14, 2019. On the reverse side of the claim form appellant's supervisor contended that appellant was not in the performance of duty when injured, asserting that appellant's claim was in retaliation for his termination from employment.

In a September 6, 2019 letter of controversion, appellant's supervisor asserted that appellant "appeared fine" when walking into the building the night of the alleged injury and submitted corroborating witness statements from three of appellant's coworkers. He also noted that an onsite investigation was conducted and no holes in the property were seen. The supervisor further contended that on August 13, 2019 appellant had received his 30-day evaluation of all unsatisfactory marks and it was determined that he would be released from employment. He noted that appellant's last day of work was August 14, 2019, he was not notified of appellant's alleged injury until August 26, 2019, and the Form CA-1 was not filed until September 5, 2019.

In an August 23, 2019 letter, appellant explained that he was injured on August 13, 2019 while delivering mail at a specific address. He noted that the injury occurred at approximately 6:00 p.m. when he was crossing a lawn to deliver mail to the next residence. As he walked across the lawn, appellant "stumbled into a hole or crevice in the ground and hit the ground with extensive force landing on [his] knees before falling completely on the lawn." He related that he was able to stand and continue to the next house before returning to his vehicle, but the next day awoke to "intense and excruciating knee pain." Appellant explained that he did not call off work because he was only scheduled to attend a safety refresher course that day. After the class ended, he sought treatment at an urgent care facility.

In an accompanying affidavit dated September 13, 2019, appellant again asserted that on August 13, 2019 he was assigned to Doylestown City Route 5 and that, at approximately 5:45 p.m. on that date, he walked across a lawn to deliver mail. He explained that, at approximately 6:00 p.m., having delivered the mail at that particular address, he was walking back across the lawn "when [his] right leg dropped into a hole, crevice, or divot, at which time [he] lost [his] balance and fell forcefully against the ground." After the fall, appellant laid startled by the force for several seconds, but was then able to stand and cautiously continue his work. The next day, he awoke to excruciating pain and swelling in his right knee. Although he was in pain, appellant sought treatment at an urgent care facility where he was diagnosed with a right knee contusion. His knee was immobilized in a brace and he was given discharge and follow-up instructions. Appellant continued to experience intense pain and swelling in his right knee, such that he could not walk. On August 23, 2019 he was transported by ambulance to a hospital.

In support of his claim, appellant submitted medical evidence including reports dated August 14 and 21, 2019 from Gretchen L. O'Donnell and Christina S. Knecht, physician assistants. Ms. O'Donnell reported that on August 13, 2019 he fell into a hole in a yard while delivering mail. She diagnosed right knee contusion. Ms. Knecht repeated these findings and provided work restrictions.

Discharge instructions dated August 23, 2019 documented that appellant sought medical attention at an emergency room for right knee pain. Dr. Anne Marie Kuchera, an osteopath, treated him and diagnosed right knee injury.

Multiple right knee x-rays dated August 23, 2019 showed progressive narrowing of the joint space consistent with multi-compartmental osteoarthritis. These x-rays also demonstrated moderate-to-severe multi-compartmental right knee osteoarthritis, which had developed since 2008 as well as a small suprapatellar effusion.

On September 10, 2019 appellant underwent a right knee magnetic resonance imaging (MRI) scan, which demonstrated severe degeneration and tearing of the posterior horn of the lateral meniscus, as well as very extensive full-thickness cartilage wear with mild subchondral bone marrow edema. The MRI scan also demonstrated small tear of the medial meniscus and partial thickness cartilage wear and severe partial-thickness cartilage wear in the patellofemoral compartment. The MRI scan further demonstrated large tri-compartmental osteophytes causing severe impingement on the anterior cruciate ligament, multiple ossific bodies, and joint effusion.

In a September 16, 2019 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

Appellant subsequently submitted a September 25, 2019 response, wherein he provided additional details further describing the alleged employment incident. He noted the location of the alleged incident and reiterated that he was carrying mail alone while in the performance of duty on the date of injury. Appellant asserted that his prior statement was a truthful, accurate account of his injury and disputed the statements provided by the employing establishment.

On September 26, 2019 Dr. Matthew Lorei, a Board-certified orthopedic surgeon, completed an attending physician's report (Form CA-20) and described appellant's history of falling on a lawn while delivering mail. He diagnosed degenerative joint disease (DJD) of the right knee. Dr. Lorei checked a box marked "Yes" indicating that this condition was caused or aggravated by appellant's employment activities.

By decision dated October 21, 2019, OWCP denied appellant's traumatic injury claim, finding that he failed to submit medical opinion evidence establishing that his diagnosed DJD of the right knee was causally related to the accepted August 13, 2019 employment incident.

On November 12, 2019 appellant requested reconsideration. He argued that the August 14 and 21, 2019 reports of Ms. O'Donnell and Ms. Knecht were competent to establish causal relationship between his diagnosed conditions and the August 13, 2019 employment incident. Appellant resubmitted the August 14 and 21, 2019 reports and provided copies of state regulations regarding physician assistants.

By decision dated February 10, 2020, OWCP modified its October 21, 2019 decision to find that appellant had not established that the August 13, 2019 employment incident occurred as alleged. Thus, it concluded that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 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. Generally, 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.[6] The second component is whether the employment incident caused a personal injury.[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 serious 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] An

[3] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *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] *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).

[6] *T.M.*, Docket No. 19-0380 (issued June 26, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

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

[9] *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *Betty J. Smith*, 54 ECAB 174 (2002).

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.[10]

ANALYSIS

The Board finds that appellant has met his burden of proof to establish that a traumatic incident occurred in the performance of duty on August 13, 2019 as alleged.

On his September 3, 2019 Form CA-1, appellant alleged that on August 13, 2019 he injured his knee when he fell into a hole in a lawn while delivering mail. He stopped work on August 14, 2019. In an August 23, 2019 letter, appellant explained that he was injured on August 13, 2019 while delivering mail at a specific address. He noted that the injury occurred at approximately 6:00 p.m. when he was crossing a lawn to deliver mail to the next residence. As appellant walked across the lawn, he "stumbled into a hole or crevice in the ground and hit the ground with extensive force landing on [his] knees before falling completely on the lawn." He related that he was able to stand and continue to the next house before returning to his vehicle, but the next day awoke to "intense and excruciating knee pain." Appellant explained that he did not take a day off work because he was only scheduled to attend a safety refresher course that day. After the class ended, he sought treatment at an urgent care facility.

In an accompanying affidavit dated September 13, 2019, appellant again asserted that on August 13, 2019 he was assigned to Doylestown City Route 5 and that, at approximately 5:45 p.m. on that date, he walked across a lawn to deliver mail. He explained that, at approximately 6:00 p.m., having delivered the mail at that particular address, he was walking back across the lawn "when [his] right leg dropped into a hole, crevice, or divot, at which time [he] lost [his] balance and fell forcefully against the ground." After the fall, appellant laid startled by the force for several seconds, but was then able to stand and cautiously continue his work. The next day, he awoke to excruciating pain and swelling in his right knee. Although he was in pain, appellant sought treatment at an urgent care facility where he was diagnosed with a right knee contusion. His knee was immobilized in a brace and he was given discharge and follow-up instructions. Appellant continued to experience intense pain and swelling in his right knee, such that he could not walk. On August 23, 2019 he was transported by ambulance to a hospital.

Appellant also submitted medical evidence, including August 14 and 21, 2019 reports from physician assistants, relating his history of injury.

As explained above, 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.[11] An employee's statements

[10] *D.F., id.*; *see also M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

[11] *Supra* note 8.

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]

Appellant has consistently stated that on August 13, 2019 he injured his knee when he fell into a hole in a lawn while delivering mail. There are no inconsistences that cast serious doubt on appellant's claim. The Board, thus, finds that appellant has met his burden of proof to establish that a traumatic incident occurred in the performance of duty on August 13, 2019, as alleged.

As appellant has established that an incident occurred in the performance of duty on August 13, 2019 as alleged, the question becomes whether the incident caused an injury.[13] As OWCP found that he had not established fact of injury, it did not evaluate the medical evidence. The case must, therefore, be remanded for consideration of the medical evidence of record.[14] After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met his burden of proof to establish an injury causally related to the accepted August 13, 2019 employment incident, and payment for any attendant disability.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that a traumatic incident occurred in the performance of duty on August 13, 2019 as alleged. The Board, however, further finds that the case is not in posture for decision with regard to causal relationship.

[12] *D.F., supra* note 9; *see also M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

[13] *D.F., id.*; *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

[14] *D.F., id.*; *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2019 and February 10, 2020 decisions of the Office of Workers' Compensation Programs are set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 11, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board