

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

S.C., Appellant)

and)

DEPARTMENT OF THE AIR FORCE, AIR)
FORCE RESERVE OFFICER TRAINING)
CORPS, Terre Haute, IN, Employer)
_____)

Docket No. 22-0294
Issued: October 24, 2022

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 10, 2021 appellant filed a timely appeal from a June 17, 2021 merit decision and an October 27, 2021 nonmerit 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

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish an injury in the performance of duty on May 5, 2021, as alleged; and (2) whether OWCP properly denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the October 27, 2021 decision, appellant submitted additional evidence to OWCP. 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 May 6, 2021 appellant, then a 21-year-old Reserve Officers' Training Corps (ROTC) cadet, filed a traumatic injury claim (Form CA-1) alleging that on May 5, 2021 he developed weakness and collapsed on the floor due to a high heart rate of more than 160 beats per minute (BPM) after running 1.5 miles for the ROTC qualification fitness requirement while in the performance of duty. On the reverse side of the claim form, the employing establishment acknowledged that he was injured in the performance of duty.

In a May 6, 2021 memorandum, appellant's supervisor, D.S., recounted that he had collapsed after completing his 1.5 mile run during his qualification fitness requirement test and required immediate medical care. He was transported to the emergency room by ambulance and treated at the hospital that same day. Appellant was discharged on May 6, 2021.

In a May 17, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary and afforded him 30 days to respond.

On May 6, 2021 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) asserting that appellant collapsed due to extreme exhaustion on May 5, 2021. Dr. Daniel Stahl, an osteopath specializing in family medicine, completed the Form CA-16 on May 14, 2021 and diagnosed dehydration, acute kidney injury, and metabolic and kidney leukocytosis. He checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by appellant's May 5, 2021 employment injury.

By decision dated June 17, 2021, OWCP denied appellant's traumatic injury claim, finding that he had not established the factual component of his claim, as he had not provided evidence or a statement explaining how he was injured as a result of the alleged employment incident. It noted that he had not responded to the request for a factual statement in the May 17, 2021 development letter. OWCP concluded, therefore that the requirements had not been met to establish an injury as defined by FECA.

On September 21, 2021 appellant requested reconsideration and submitted a statement alleging that he was injured on May 5, 2021 during his required physical fitness assessment. He asserted that he collapsed as he was finishing his 1.5 mile run and was taken to the hospital. Appellant listed his diagnoses as metabolic acidosis, sinus tachycardia, acute kidney injury, dyspnea, and leukocytosis. He provided his discharge instructions.

By decision dated October 27, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim.

LEGAL PRECEDENT -- ISSUE 1

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

³ *Supra* note 1.

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 must first be determined 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 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

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. 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. 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 serious doubt on the employee's statements in determining whether a *prima facie* case has been established.¹⁰ An employee's statement 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.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has met his burden of proof to establish that the May 5, 2021 employment incident occurred in the performance of duty, as alleged.

As noted, an employee's statement alleging that an injury occurred at a given time and place, and in a given manner, is of great probative value and will stand unless refuted by strong or

⁴ *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).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *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).

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

⁸ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *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 *B.M.*, Docket No. 21-1185 (issued March 4, 2022); *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

persuasive evidence.¹² Appellant alleged that he experienced weakness and collapsed on the floor due to a high heart rate of more than 160 BPM after running 1.5 miles for the ROTC qualification fitness requirement. He provided a detailed account of the incident on his May 6, 2021 claim form. The employing establishment acknowledged that he was injured in the performance of duty. D.S., his supervisor, provided a May 6, 2021 statement, and recounted that appellant had collapsed after completing his 1.5 mile run during his qualification fitness requirement test, and required immediate medical care.

Additionally, appellant provided a consistent description of the May 5, 2021 employment incident to his physician. On May 14, 2021 Dr. Daniel completed the Form CA-16 and diagnosed dehydration, acute kidney injury, and metabolic and kidney leukocytosis. He checked a box marked “Yes” indicating that the diagnosed conditions were caused or aggravated by appellant’s May 5, 2021 employment injury of extreme exhaustion.

As appellant has established that the May 5, 2021 employment incident occurred as alleged, the question becomes whether the incident caused an injury. As OWCP found that appellant had not established fact of injury, it has not evaluated the medical evidence. The Board will, therefore, set aside OWCP’s June 17, 2021 decision and remand the case for consideration of the medical evidence of record.¹³ 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 May 5, 2021 employment incident.¹⁴

CONCLUSION

The Board finds that this case is not in posture for decision.¹⁵

¹² *Id.*

¹³ A.W., Docket No. 21-0686 (issued April 5, 2022); N.A., Docket No. 21-0773 (issued December 28, 2021); *see* M.H., Docket No. 20-0576 (issued August 6, 2020); S.M., Docket No. 16-0875 (issued December 12, 2017).

¹⁴ In light of the Board’s disposition of Issue 1, Issue 2 is rendered moot.

¹⁵ The Board notes that the employing establishment issued a Form CA-16, dated May 6, 2021. 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); B.W., Docket No. 22-0134 (issued May 24, 2022); V.S., Docket No. 20-1034 (issued November 25, 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 June 17 and October 27, 2021 decisions of the Office of Workers' Compensation Programs are set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 24, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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