

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

C.M., Appellant)	
)	
and)	Docket No. 22-0590
)	Issued: October 20, 2022
DEPARTMENT OF THE AIR FORCE, TRAVIS)	
AIR FORCE BASE, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 11, 2022 appellant filed a timely appeal from a February 11, 2022 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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the February 11, 2022 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on December 30, 2021, as alleged.

FACTUAL HISTORY

On January 3, 2022 appellant, then a 36-year-old fire protection and prevention specialist, filed a traumatic injury claim (Form CA-1) alleging that on December 30, 2021 he developed a hernia in his right lower abdomen when he put on protective gear to respond to an in-flight emergency while in the performance of duty. He explained that he initially felt discomfort and after responding to a separate incident of smoke, later that day, he began to experience a progressively worsening sharp pain radiating from his right testicle to his lower abdomen. On the reverse side of his Form CA-1, the employing establishment acknowledged that he was in the performance of duty when injured, and indicated that its knowledge of the facts about the injury were consistent with his statements. Appellant stopped work on December 30, 2021.

In a development letter dated January 11, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

On January 18, 2022 OWCP received an undated medical report from an emergency room physician, Dr. Thomas P. Dailey, a Board-certified internist.

In a work status report dated January 14, 2022, Dr. Anya Myers, a Board-certified orthopedist, noted a December 30, 2021 date of injury. She released appellant to modified work duties through January 28, 2022, including lifting, carrying, pushing, and pulling no more than 20 pounds.

In a medical report dated January 28, 2022, Dr. Myers continued appellant's modified work duties through February 25, 2022. In a progress report of even date, Dr. Meyers related that appellant was experiencing testicular and abdominal pain due to a right inguinal hernia and further noted that his condition impacted his ability to walk. She noted that he was treated on an earlier date in an emergency department where his hernia was reduced which decreased his pain.

By decision dated February 11, 2022, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that a traumatic injury occurred in the performance of duty on December 30, 2021, as alleged. Consequently, it found that he had not met the requirements 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 that the individual is an employee of the United

³ *Supra* note 1.

States within the meaning of FECA, that the claim was timely filed within the applicable time 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 first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.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. 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 sufficient doubt on the employee's statements in determining whether a *prima facie* case has been established.⁸ 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.⁹

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 December 30, 2021, as alleged.

On his January 3, 2022 Form CA-1 appellant alleged that on December 30, 2021 he developed a hernia and lesion on the right testicle after dressing in protective gear to respond to a fire emergency while in the performance of duty. On the reverse side of his Form CA-1, the

⁴ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

⁹ *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

employing establishment acknowledged that he was in the performance of duty when injured, and indicated that its knowledge of the facts about the injury were consistent with his statements.

On January 18, 2022 OWCP received an emergency department report from Dr. Dailey. It also received January 28, 2022 reports from Dr. Meyers, wherein she noted that he was treated on an earlier date in an emergency department where his hernia was reduced which decreased his pain. These reports were contemporaneous with the alleged employment incident and consistent with appellant's description of his injuries.

The injuries appellant claimed are consistent with the facts and circumstances set forth in the medical record. As noted above, the 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.¹⁰ The Board, thus, finds that appellant has met his burden of proof to establish that the December 30, 2021 employment incident occurred in the performance of duty, as alleged.

As appellant has established that, an incident occurred in the performance of duty on December 30, 2021 as alleged, the question becomes whether the incident caused an injury.¹¹ 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.¹² 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 December 20, 2021 employment incident.¹³

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 December 30, 2021, as alleged.

¹⁰ *L.Y.*, Docket No. 21-0221 (issued June 30, 2021); *M.W.*, Docket No. 20-1489 (issued March 29, 2021); *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

¹¹ *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

¹² *D.F.*, *id.*; *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, *supra* note 7.

¹³ The Board notes that the employing establishment issued a Form CA-16, dated July 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); *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 February 11, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 20, 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