

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

_____)	
T.T., Appellant)	
)	
and)	Docket No. 22-0792
)	Issued: October 18, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Cleveland, OH, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant,¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 27, 2022 appellant filed a timely appeal from a January 24, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on May 26, 2021, as alleged.

FACTUAL HISTORY

On June 1, 2021 appellant, then a 48-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 26, 2021 he sustained bruises, cuts, and abrasions to his knees, elbows, hands, and right shoulder when he was chased by a loose dog and fell while in the performance of duty. On the reverse side of the claim form the employing establishment acknowledged that he was in the performance of duty when injured, his injury was caused by a third party, and its knowledge of the facts about the injury were consistent with his statements. Appellant stopped work on that date.

In a June 2, 2021 development letter, OWCP informed appellant that no evidence had been received in support of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a factual questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

By decision dated July 8, 2021, OWCP denied appellant's traumatic injury claim, finding that he had not submitted sufficient evidence to establish that the events or incident occurred as alleged. It noted that he did not respond to its developmental questionnaire and had not submitted any evidence in support of his claim. Consequently, OWCP found that appellant had not met the requirements to establish an injury as defined by FECA.

On July 16, 2021 appellant requested reconsideration of OWCP's July 8, 2021 decision.

On July 21, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held telephonically on November 10, 2021.

Thereafter, OWCP received x-ray reports of appellant's right wrist, ribs, and chest dated June 1, 2021 from Dr. Marisol Nunez-Hoyo, a Board-certified diagnostic radiologist. Dr. Nunez-Hoyo noted an impression of a questionable fracture on the left anterior medial eighth rib.

At the November 10, 2021 hearing, appellant testified that he was delivering mail on the date of the alleged incident when he was chased by a loose dog that was usually kept behind a fence. He related that he turned to run and "fell like flat ... I guess on my front, and bruised and skinned up my knees, my shoulders, and elbows, and did some damage to my wrists." Appellant testified that he did not finish his route that day, later reported the fall, and believed that he wrote a statement detailing the incident. The hearing representative held the case record open for 60 days for the submission of additional evidence. No additional evidence was received.

By decision dated January 24, 2022, OWCP's hearing representative affirmed OWCP's July 8, 2021 decision.

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 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. The first component is that 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. 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

³ *Id.*

⁴ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 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).

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 May 26, 2021, as alleged.

The record establishes that on May 26, 2021 appellant was in the performance of duties of his federal employment when he was chased by a dog and fell, sustaining bruises, cuts, and abrasions to his knees, elbows, hands, and right shoulder. On the reverse side of his June 1, 2021 Form CA-1, the employing establishment acknowledged that he was in the performance of duty when injured, that his injury was caused by a third party, and indicated that its knowledge of the facts about the injury were consistent with his statements. Appellant also submitted June 1, 2021 x-ray reports of his right wrist, ribs, and chest from Dr. Nunez-Hoyo, which 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 he set forth. 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, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.¹⁰ 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.¹¹ The Board, thus, finds that appellant has met his burden of proof to establish that the May 26, 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 May 26, 2021 as alleged, the question becomes whether the incident caused an injury.¹² 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.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 26, 2021 employment incident.¹⁴

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

¹² *D.F.*, *id.*; *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

¹³ *D.F.*, *id.*; *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

¹⁴ 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).

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 May 26, 2021, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the January 24, 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 18, 2022
Washington, DC

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

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

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