

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

_____)	
D.T., Appellant)	
)	
and)	Docket No. 22-1156
)	Issued: April 24, 2023
DEPARTMENT OF THE ARMY, CHEMICAL)	
MATERIALS AGENCY, PUEBLO CHEMICAL)	
DEPOT, Pueblo, CO, Employer)	
_____)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 12, 2022 appellant filed a timely appeal from a January 14, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees'

¹ Appellant submitted a timely request for oral argument before the Board. 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 appellant's oral argument request, he asserted that oral argument should be granted because he wished to respond to allegedly false information provided by the employing establishment. Appellant also wished to discuss payment of his medical bills and entitlement to disability compensation. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be 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.

Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on October 13, 2021, as alleged.

FACTUAL HISTORY

On December 1, 2021 appellant, then a 52-year-old security guard, filed a traumatic injury claim (Form CA-1) alleging that, on October 13, 2021 at 6:40 a.m., he fractured or dislocated a joint in his right fifth finger when he jammed or struck his hand when reaching to open a door while in the performance of duty. He stopped work on October 13, 2021 and returned to work on an unspecified date. On the reverse side of the claim form, appellant's supervisor, K.M., contended that appellant's alleged injury was not sustained in the performance of duty and provided a December 2, 2021 statement controverting the claim. He alleged that, while at the firing range on November 5, 2021 appellant told him that he might be unable to fire his weapon because he had injured his hand at home "but had reported it to a supervisor." K.M. alleged that appellant had also informed other supervisors that the hand injury happened at home.

In a December 2, 2021 witness statement, J.F., an employing establishment supervisor, alleged that on November 5, 2021 and an unspecified prior occasion, appellant stated that his hand injury had occurred while at home. J.F. advised appellant of the importance of going to a physician "to get his hand examined."

In a witness statement of even date, F.V., an employing establishment supervisor, alleged that on November 5, 2021 appellant had been sent home from the firing range. F.V. subsequently spoke with appellant by telephone. During the conversation, appellant allegedly informed F.V. "that he had hurt his hand at home and not to worry[,] he didn't hurt it at the range."

In a development letter dated December 9, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

Thereafter, OWCP received a December 8, 2021 report from Dr. Richard Trifilo, Board-certified in occupational and aerospace medicine. Dr. Trifilo recounted that on October 13, 2021 appellant reached out to open a door and hit his right hand on the edge of the door. Appellant had returned to full-duty work. He had waited to seek medical treatment as "he thought it would just

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the January 14, 2022 OWCP decision, appellant submitted 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.*

get better on its own.” Dr. Trifilo obtained x-rays of the right hand, which demonstrated a mildly displaced fracture of the right fifth metacarpal. He diagnosed contusion of the right hand and fracture of the fifth metacarpal bone of the right hand. Dr. Trifilo referred appellant to an orthopedist.

In a December 8, 2021 form report, Dr. Trina L. Bogart, Board-certified in emergency medicine, ordered x-rays of the right hand, prescribed physical therapy, and provided work restrictions.

In a December 10, 2021 statement, the employing establishment again controverted appellant’s claim. It asserted that F.V.’s witness statement demonstrated that the claimed injury had not occurred in the performance of duty.

By decision dated January 14, 2022, OWCP denied appellant’s claim, finding that the factual component of fact of injury had not been established. 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 FECA⁴ 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 of FECA,⁵ 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.⁶ 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.⁷

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.⁸

⁴ *Supra* note 2.

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

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.⁹ 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.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury in the performance of duty on October 13, 2021 as alleged.

Appellant has not sufficiently explained how the injury occurred on October 13, 2021 and why he waited until December 1, 2021, to report the injury.¹¹ In his December 1, 2021 claim form and in his December 8, 2021 history to Dr. Trifilo, he alleged that he either fractured or dislocated a joint in his right fifth finger when he struck his hand on the edge of a door. However, appellant did not otherwise describe the location of the incident, the duties he was performing at the time he reached out to open the door, or the mechanism of injury. Additionally, although he recounted immediate swelling in his right hand, he did not seek medical treatment until December 8, 2021. These circumstances, which include a vague description of the alleged traumatic incident, late notification of injury, and a delay in seeking medical treatment, cast serious doubt on the validity of the claim.¹²

Additionally, supervisors K.M., J.F., and F.V. submitted witness statements dated December 2, 2021, providing a detailed recounting of November 5, 2021 conversations with appellant in which he stated that he had injured his hand while at home. These statements further cast serious doubt on the accuracy of appellant's account of events.¹³

Appellant also submitted a December 8, 2021 report by Dr. Trifilo, recounting appellant's assertion that he struck his right hand on the edge of a door while at work on October 13, 2021. However, this report is insufficient to establish the factual component of appellant's injury, as the history of injury was insufficiently detailed. Appellant's failure to provide a complete history of

⁹ *T.T.*, Docket No. 22-0792 (issued October 18, 2022); *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

¹⁰ *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹¹ *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).

¹² *See M.E.*, *id.*

¹³ *L.W.*, Docket No. 20-1438 (issued May 18, 2021).

injury as a component of this medical report casts further doubt that the traumatic injury occurred in the performance of duty as alleged.¹⁴

As the evidence of record is insufficient to establish an injury in the performance of duty on October 13, 2021 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 October 13, 2021, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 24, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁴ *Id.*; see also *S.Z.*, Docket No. 19-1125 (issued October 22, 2020); *Merton J. Sills*, 39 ECAB 572 (1988).