

¹ 5 U.S.C. § 8101 *et seq.*

shoulder while lifting delivery point sequence (DPS) trays and packages into a mail truck at a loading dock. On the reverse side of the claim form, although the employing establishment acknowledged that appellant was in the performance of duty at the time of the claimed injury, it controverted the claim, contending that he had changed his story regarding his claimed injury more than once and he was still on the job. Appellant did not stop work.

In support of his claim, appellant submitted a progress report and a duty status report (Form CA-17) from Dr. Larry Tunnell, a specialist in internal medicine, dated January 19, 2022, which noted a “Case Date” of December 27, 2021. His diagnoses were listed as neck and right trapezius strain.

In a report dated January 31, 2022, a physician assistant, noted that appellant was seen for a recheck of a neck/right shoulder injury that occurred at work on December 27, 2021. The report noted that appellant had been delivering packages at work with no issues. OWCP continued to receive physical therapy reports, and additional reports from physician assistants, and nurse practitioners noting a “Case Date” of December 27, 2021, or an injury date of March 10, 2022.

OWCP, by development letter dated February 9, 2022, informed appellant of the deficiencies of his claim. It advised him of the type of additional factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

By decision dated March 25, 2022, 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 supporting that an employment incident occurred on January 3, 2002, as alleged. It noted that he had not responded to the February 9, 2022 development questionnaire. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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,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

² *Id.*

³ S.S., Docket No. 19-1815 (issued June 26, 2020); *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).

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 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. 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 at the time and place, and in the manner alleged.⁶ The second component is whether the employment incident caused a personal injury.⁷

An 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 The employee has not met his or her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁹ 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.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

The Board finds that appellant has not met his burden of proof to establish a traumatic injury in the performance of duty on January 3, 2022, as alleged.

On his Form CA-1, appellant asserted that he sustained a right shoulder injury as a result of lifting DPS trays and packages into a mail truck. However, he did not provide a detailed explanation as to how he was injured as a result of the alleged employment incident. By development letter dated February 9, 2022, OWCP requested that appellant describe the factual

⁴ *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *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).

⁵ *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *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).

⁶ *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *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 *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

⁹ See *E.C.*, Docket No. 19-0943 (issued September 23, 2019).

¹⁰ See *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *L.B.*, Docket No. 19-1799 (issued March 11, 2020); *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *Betty J. Smith*, 54 ECAB 174 (2002).

¹¹ See *M.C.*, *id.*; *D.B.*, 58 ECAB 464, 466-67 (2007).

circumstances of the claimed incident and provided him with a development questionnaire for completion. However, appellant did not complete and return the February 9, 2022 development questionnaire. Therefore, he has failed to present a clear factual statement in the record describing the specific alleged employment-related incident alleged to have caused or contributed to his claimed medical condition.¹² As appellant has not responded to the request for factual information to describe the employment incident and circumstances surrounding his alleged injury, the Board finds that he has not established that a traumatic injury occurred in the performance of duty on January 3, 2022, as alleged.¹³

The Board further finds that, because appellant failed to establish the first component of fact of injury, it is unnecessary to discuss whether he submitted medical evidence sufficient to establish that a medical condition existed and whether the condition was causally related to the employment factors as alleged.¹⁴ Thus, the Board finds that he 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 January 3, 2022, as alleged.

¹² See *B.M.*, Docket No. 21-1185 (issued March 4, 2022); *D.C.*, Docket No. 18-0082 (issued July 12, 2018).

¹³ See *B.M.*, *id.*; *H.B.*, Docket No. 18-0278 (issued June 20, 2018); *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

¹⁴ See *B.M.*, *id.*; *R.L.*, Docket No. 17-1670 (issued December 14, 2018); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997) (as appellant failed to establish that the claimed event occurred as alleged, it is unnecessary to discuss the probative value of medical evidence).

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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