

August 10, 2020. He indicated that he was “getting in my car injured left foot.” Appellant indicated that he did not file his notice within 30 days of August 10, 2020 because he was seeking medical treatment. The employing establishment controverted the claim, noting that appellant did not have work hours on August 10, 2020.

OWCP received employing establishment pay records for the time period January 4, through October 31, 2020 which indicated that appellant had worked on August 1, 2, 3, 8, 15, and September 3 and 4, 2020.

By development letter dated November 2, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested evidence.

In an August 31, 2020 letter to appellant, Dr. Toan T. Nguyen, Board-certified in internal medicine, advised that a review of appellant’s x-rays revealed heel spurs and recommended that appellant see a podiatrist for treatment.

In an October 23, 2020 treatment note, and a letter of even date, Dr. Mohsen Khoshneviszadeh, a podiatrist, noted that appellant had been having left heel pain since August 10, 2020 due to plantar fasciitis. He recommended arch supports with shoe wear of choice and to avoid prolonged standing and walking until the condition resolved.

By decision dated December 14, 2020, OWCP denied appellant’s claim, finding that the medical evidence was insufficient to establish a condition causally related to the accepted work events.

On May 10, 2021 appellant requested reconsideration.

In November 23, 2020 progress notes, Dr. Nguyen related that appellant was a census worker who began work on August 1, 2020. He noted that appellant was evaluated on August 31, 2020, and by a colleague on September 10, 2020 for persistent heel pain. Appellant’s x-rays revealed heel spurs. He was unable to work from August 10 through November 8, 2020.

In progress notes dated October 23, 2020, Dr. Khoshneviszadeh related that appellant had left heel pain which was sharp in nature, and which began abruptly approximately two months prior. He indicated that he had discussed the etiology and course of appellant’s plantar fasciitis and explained that it was an over-use injury.

Progress notes from Sheera Destin, a licensed practical nurse, dated December 17, 2020, indicated that appellant was seen in follow up for left heel pain. She noted that appellant’s symptoms were chronic and recurrent.

By decision dated May 25, 2021, OWCP modified its December 14, 2020 decision to find that the evidence of record was insufficient to establish that the incident occurred on August 10, 2020 as alleged.

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, 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.³ 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.⁴

To determine whether an employee sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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. The second component is whether the employment incident caused a personal injury.⁵

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.⁶ The employee has not met his or her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances such 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 an employee's statement in determining whether a *prima facie* case has been established.⁷ An employee's statement alleging that an injury occurred at a given

² *Id.*

³ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁵ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

⁶ *S.W.*, Docket No. 17-0261 (issued May 24, 2017).

⁷ *C.M.*, Docket No. 20-1519 (issued March 22, 2019); *S.A.*, Docket No. 19-0613 (issued August 22, 2019); *Betty J. Smith*, 54 ECAB 174 (2002).

time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury in the performance of duty on August 10, 2020, as alleged.

Appellant alleged on his claim form, “getting in my car injured left foot.” He identified August 10, 2020 as the date he became aware of his condition and its relationship to his federal employment. The employing establishment controverted the claim noting that appellant did not have work hours on August 10, 2020. Its payroll records which OWCP received confirmed that he did not work on August 10, 2020.

In progress reports dated October 23, 2020, Dr. Khoshneviszadeh related that appellant had plantar fasciitis and that it was an overuse injury. Appellant however failed to submit a detailed factual statement.⁹ In its November 2, 2020 development letter, OWCP specifically requested that he provide a detailed description of the alleged injury. No response was received.¹⁰

As the evidence of record is insufficient to establish a traumatic injury in the performance of duty on August 10, 2020, 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 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 August 10, 2020, as alleged.

⁸ A.C., Docket No. 18-1567 (issued April 9, 2019); *D.B.*, 58 ECAB 529 (2007); *Gregory J. Reser*, 57 ECAB 277 (2005).

⁹ *Dennis M. Darensbourg*, Docket No. 97-2167 (issued April 27, 1999).

¹⁰ *See J.D.*, Docket No. 22-0286 (issued June 15, 2022).

ORDER

IT IS HEREBY ORDERED THAT the May 25, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 21, 2023
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