

¹ 5 U.S.C. § 8101 *et seq.*

“freight elevator loading dock.” On the reverse side of the claim form, appellant’s supervisor acknowledged that appellant was in the performance of duty when injured. Appellant stopped work on December 1, 2021 and returned to work on December 7, 2021.

In a December 23, 2021 development letter, OWCP informed appellant of the deficiencies 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.

OWCP received a December 1, 2022 emergency room report from Hena Kalola, a physician assistant, noting that appellant had presented with complaints of constant head and neck pain. Ms. Kalola noted that appellant related that on that date at 10:30 a.m. while at work, he “lost his balance, fell forward, while the elevator door was coming down.” The door “hit [him] on the top of head and then [he] felt his neck go slightly back” as a result of the impact. Ms. Kalola diagnosed migraine aura, persistent and intractable. No additional evidence was received.

By decision dated January 27, 2022, 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 development questionnaire. OWCP further noted that appellant had not submitted medical evidence containing a diagnosis from a qualified physician. 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 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 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. There are two components involved in establishing fact of injury. The first component is whether appellant actually experienced the employment incident at the time and place, and in the manner

² *Id.*

³ *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).

⁴ *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 *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).

alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁶

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 of proof 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.⁷ 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.⁸

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on December 1, 2021, as alleged.

In his Form CA-1, appellant indicated that on December 1, 2021 at 10:30 a.m. he bumped his head and injured his neck while at a freight elevator loading dock. His supervisor acknowledged on the reverse side of the claim form that he was injured in the performance of duty on December 1, 2021.

In an emergency room report dated December 1, 2021, Ms. Kalola, a physician assistant, noted that appellant related complaints of head and neck pain, which he attributed to an incident that day at work at 10:30 a.m. when he lost his balance, fell forward, and an elevator door lowered and hit him on the top of his head.

Appellant has maintained that his injury occurred when he was hit on the head by an elevator door on December 1, 2021 at 10:30 a.m., which was acknowledged by his supervisor and reported by an emergency room provider. Therefore, the Board finds that he has met his burden of proof to establish that a traumatic incident occurred in the performance of duty on December 1, 2021 as alleged.

Consequently, the question becomes whether the incident caused an injury.⁹ As OWCP found that he had not established fact of injury, it did not evaluate the medical evidence. The case

⁶ *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).

⁷ *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

⁸ *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

⁹ *J.M.*, Docket No. 23-0293 (issued June 15, 2023); *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

must, therefore, be remanded for consideration of the medical evidence of record.¹⁰ After any further development 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 1, 2021 employment incident.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on December 1, 2021, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2022 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 30, 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

¹⁰ *J.M., id.*; *L.D.*, Docket No. 16-0199 (issued March 8, 2016).