

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

<p>J.F., Appellant</p>)	
)	
)	
and)	Docket No. 23-0492
)	Issued: November 8, 2023
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. COAST GUARD, U.S. COAST GUARD)	
YARD, Baltimore, MD, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
 PATRICIA H. FITZGERALD, Deputy Chief Judge
 JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 21, 2023 appellant filed a timely appeal from a November 7, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury in the performance of duty on September 19, 2022, as alleged.

FACTUAL HISTORY

On September 23, 2022 appellant, then a 37-year-old pipefitter, filed a traumatic injury claim (Form CA-1) alleging that on September 19, 2022 he fractured his coccyx when he slipped

¹ 5 U.S.C. § 8101 *et seq.*

and fell on a gangway while in the performance of duty. On the reverse side of the claim form, his supervisor acknowledged that he was in the performance of duty when injured and that the statements of the employee and/or witnesses comported with his knowledge of the facts. Appellant stopped work on September 19, 2022 and returned to full-time modified work with restrictions on September 22, 2022.

In an undated attending physician's report (Form CA-20), Charles Bethmann, a physician assistant, noted a history of appellant falling down steps on September 19, 2022. He diagnosed a compression injury of the spine and a coccyx fracture. Mr. Bethmann checked a box marked "Yes" indicating that the conditions were related to an employment activity.

In a September 19, 2022 form report, Jessica Martin, a physician assistant, noted that appellant related a history that he slipped and fell down wet gangway steps while at work that day. She diagnosed coccyx pain and indicated that he was not fit for duty.

In a work status note of even date, Mr. Bethmann advised that appellant remain out of work. He anticipated that he would be able to return to restricted-duty work on September 22, 2022.

In a September 23, 2022 work status note, Maryam Messforosh, a physician assistant, released appellant to return to work with restrictions including no lifting, pushing, or pulling greater than 10 pounds occasionally and no more than occasional standing, walking, overhead lifting, or repetitive use of the hands.

In a September 30, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP thereafter received a September 19, 2022 medical report from Dr. Walter Gianelle, a Board-certified emergency medicine specialist, who noted that appellant related complaints of lower back pain after a slip and fall on steps at work. Dr. Gianelle further noted that he landed on his low back and coccyx area. On physical examination, he documented tenderness to palpation of the coccyx and paravertebral muscles from L4 to S1. Dr. Gianelle obtained x-rays, which revealed a fracture of the coccyx. He diagnosed a closed fracture of the coccyx.

In September 23 and 30, 2022 follow-up reports, Dr. Gianelle noted that appellant related ongoing back pain and that he had been unable to sit at work due to increased pain. He further noted that he "fell at work from six steps and has broken the coccyx." Dr. Gianelle diagnosed fracture of coccyx with routine healing.

Ms. Messforosh, in a September 30, 2022 work status note, recommended ongoing work restrictions.

By decision dated November 7, 2022, OWCP denied appellant's traumatic injury claim, finding that he had not submitted sufficient evidence to establish that the events occurred as alleged. 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 the employee actually experienced the employment incident at the time and 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.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.⁷ In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. 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.⁸ 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.⁹

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).

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

⁸ *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *Betty J. Smith*, 54 ECAB 174 (2002).

⁹ *D.F., id.*; *see also 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 September 19, 2022, as alleged.

In his September 23, 2022 Form CA-1, appellant indicated that on September 19, 2022 he slipped and fell on a gangway and fractured his coccyx. His supervisor acknowledged on the reverse side of the claim form that he was injured in the performance of duty on February 19, 2022 and that his knowledge of the facts about the injury comported with statements of the employee and/or witnesses.

Appellant also provided reports from an emergency department dated September 19, 2022, the day of the employment incident. In a September 19, 2022 medical report, Dr. Gianelle noted that appellant related that he slipped on steps at work and landed on his coccyx region. In a form report of even date, Ms. Martin noted that he related that he slipped and fell down wet gang-way steps on that date. Dr. Gianelle provided a history of injury provided additional details and discussion of the employment incident, and further substantiated his account of the September 19, 2022 employment incident. In an undated Form CA-20, Mr. Bethann indicated that appellant fell down steps. The injuries appellant claimed, and the initial medical treatment received, are all consistent with the facts and circumstances he set forth in his Form CA-1.¹⁰ There are no inconsistencies in the evidence that cast serious doubt upon the validity of the claim. Therefore, the Board finds that she has established a traumatic incident in the performance of duty on September 19, 2022, as alleged.¹¹

As appellant has established that an incident occurred in the performance of duty on September 19, 2022, 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 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 September 19, 2022 employment incident.

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 September 19, 2022, as alleged. The Board further finds that this case is not in posture for decision regarding whether he has established an injury causally related to the accepted September 19, 2022 employment incident.

¹⁰ See *F.F.*, Docket No. 22-0266 (issued September 27, 2022); *C.H.*, Docket No. 19-1781 (issued November 13, 2020).

¹¹ *C.B.*, Docket No. 21-0670 (issued January 27, 2022).

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

¹³ See *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2022 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 8, 2023
Washington, DC

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

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

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