United States Department of Labor
Employees' Compensation Appeals Board

R.W., Appellant	)	
and	)	**Docket No. 24-0013**
	)	**Issued: March 13, 2024**
DEPARTMENT OF THE INTERIOR, U.S. GEOLOGICAL SURVEY, Lakewood, CO, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 7, 2023 appellant filed a timely appeal from a September 25, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (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 a traumatic injury in the performance of duty on September 14, 2022, as alleged.

[1] Appellant also appealed from a January 6, 2023 merit decision of OWCP. However, as he did not file the appeal within 180 days from the date OWCP issued that decision, the Board has no jurisdiction to review it. *See* 20 C.F.R. § 501.3(e), which provides in pertinent part: "Any notice of appeal must be filed within 180 days from the date of issuance of a decision of the OWCP."

[2] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On November 17, 2022 appellant, then a 63-year-old hydrologist, filed a traumatic injury claim (Form CA-1) alleging that on September 15, 2022 he sustained a left hand distal phalanges fracture requiring pyrogenic granuloma excision after he struck his thumb when installing a battery while in the performance of duty. He explained that at the time of the injury he was in the parking lot of the Denver Federal Center. The employing establishment acknowledged that the injury occurred in the performance of duty. Appellant did not stop work.

In a report dated November 2, 2022, Dr. Rudy Kovachevich, a Board-certified orthopedic surgeon, noted that on September 12, 2022 appellant crushed the distal aspect of his thumb when a wrench he was using to remove a tight bolt slipped and crushed his thumb. He noted that the injury occurred at home and diagnosed left dorsal thumb mass status post prior injury.

In a November 18, 2022 operative report, Dr. Kovachevich noted that appellant presented with a history of a growth on the dorsal aspect of his left thumb that occurred after previous injury/trauma. He performed surgery for excision of subcutaneous left dorsal thumb tumor/nailbed mass/pyogenic granuloma.

In a November 27, 2022 letter of memorandum, the employing establishment advised that the injury occurred on September 12, 2022 and not the date stated on the Form CA-1, September 15, 2022. It further advised that appellant was not injured in the parking lot of the Denver Federal Center, as alleged.

In a development letter dated December 5, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed, and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a December 8, 2022 statement, appellant noted that the injury occurred on September 14, 2022 not September 15, 2022, as originally noted on the Form CA-1. He related that on September 13, 2022 he inspected the government vehicle he was to use to drive to a wildfire workshop in Granby, Colorado the following week. Appellant found that the battery was dead, and he removed the battery and took it home where he tried to charge it. When the battery failed to charge, he took it to an auto parts store to charge overnight. On September 14, 2022 appellant purchased a new battery because the old battery failed to charge. He returned to the employing establishment where he attempted to install the battery. While installing the battery, the wrench deflected off the socket of the bolt head and hit appellant's left thumb. The next day appellant observed blood pooling under his thumb nail. He did not see a physician at that time as he assumed the nail would fall off and he would grow a new one. On October 31, 2022 appellant noticed an unusual red mass growing after he had removed the left thumb nail. He concluded that Dr. Kovachevich's office notes incorrectly identified the injury as occurring at his home on September 12, 2022 when it actually occurred on September 15, 2022 at work.

In a December 12, 2022 attending physician's report (Form CA-20), Dr. Kovachevich noted that appellant sustained a traumatic crush injury to the distal aspect of the thumb on September 14, 2022. He diagnosed crushing left thumb injury. Dr. Kovachevich checked a box marked "Yes" to the question of whether the diagnosed condition had been caused or aggravated

by an employment activity. He related that appellant had undergone a left thumb nailbed mass excision from the injury sustained on September 14, 2022.

By decision dated January 6, 2023, OWCP denied appellant's claim finding that he had not established that the injury occurred, as alleged. It noted that the injury date listed on the Form CA-1 he submitted was September 15, 2022, that he did not file his claim until November 17, 2022, and his subsequent statement identified the date of injury as September 14, 2022. In addition, a medical report listed the date of injury as September12, 2022. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 17, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearing's and Review. A telephonic hearing was held on July 12, 2023.

Appellant submitted an additional statement in which he explained that his injury had occurred on September 14, 2022. He submitted global positioning system (GPS) tracking results from his telephone which indicated that he drove from an auto parts store to his home, and then to the employing establishment on September 14, 2022.

At the hearing appellant testified that the incident occurred on either September 13 or 14, 2022 and that he delayed filing his claim until November 2022 when his thumb became an issue. He initially believed that he could ice the thumb and it would heal on its own. Appellant reiterated that he was preparing a government vehicle to drive seven passengers for a field trip to the burn scar at the north inlet of the Rocky Mountain National Park, near Grandy. He also testified that on Wednesday September 14, 2022 he installed the new battery as the old one was dead. While installing the battery, appellant stated that the socket part of a wrench came off the bolt and hit his left thumb.

By decision dated September 25, 2023, OWCP's hearing representative affirmed the January 6, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[4] 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

[3] *Id.*

[4] *S.P.*, Docket No. 23-0436 (issued September 18, 2023); *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).

employment injury.[5] 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.[6]

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. First, 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. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[7]

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.[8] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.[9]

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on September 14, 2022, as alleged.

As noted, an employee's statement alleging that an injury occurred at a given time, place, and in the manner alleged is of great probative value and will stand unless refuted by strong or persuasive evidence.[10] In his Form CA-1 dated November 17, 2022, appellant indicated that on September 15, 2022 he sustained a left hand distal phalanges fracture when he hit his thumb while installing a battery into a work vehicle. On the reverse side of the Form CA-1, the employing establishment acknowledged that he was in the performance of duty when injured.

Appellant has continuously provided a consistent description of the mechanism of injury. There is no evidence of record questioning whether he struck his left thumb while installing a battery into a work vehicle in preparation of an employing establishment field trip. While appellant noted differing dates as to when the incident occurred, he subsequently submitted GPS tracking records indicating that he travelled from the auto parts shop where he had purchased the new

[5] *S.P.*, *id.*; *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).

[6] *S.P.*, *id.*; *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).

[7] *S.P.*, *id.*; *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *S.P.*, *id.*; *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *S.P.*, *id.*; *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[10] *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *see also M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

battery to the employing establishment on September 14, 2022. He has explained that he did not immediately seek medical treatment following the incident because he assumed the nail would fall off and the thumb would heal on its own. Dr. Kovachevich, in a November 2, 2022 report, noted an injury date of September 12, 2022 and that the injury occurred at appellant's home. However, in a Form CA-20 dated December 12, 2022, he corrected the date of injury to September 14, 2022 during an employment activity.

There are no major inconsistencies in the evidence sufficient to cast serious doubt upon the validity of the claim, thus, the Board finds that appellant has met his burden of proof to establish an employment incident in the performance of duty on September 14, 2022, as alleged.[11]

As appellant has established that, an incident occurred in the performance of duty on September 14, 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 this and other 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 14, 2022 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 September 14, 2022, as alleged.

[11] *See K.H.*, Docket No. 22-0370 (issued July 21, 2022); *J.Z.*, Docket No. 14-455 (issued June 16, 2014) (appellant met his burden of proof to establish fact of injury where his various accounts were substantially similar, and reasoning that the minor variations in how his medical providers described the incident do not preclude him from establishing that the claimed incident occurred as alleged).

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

[13] *D.F.*, *supra* note 10; *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

ORDER

IT IS HEREBY ORDERED THAT September 25, 2023 decision of the Office of Workers' Compensation Programs is reversed and this case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: March 13, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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