United States Department of Labor
Employees' Compensation Appeals Board

S.W., Appellant	)	
and	)	**Docket No. 17-0282**
	)	**Issued: April 5, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Pensacola, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 17, 2016 appellant filed a timely appeal from a September 6, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 met his burden of proof to establish a traumatic injury in the performance of duty on June 18, 2016, as alleged.

FACTUAL HISTORY

On June 19, 2016 appellant, then a 32-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on June 18, 2016 he bent over to unhook a general purpose container (GPC) from the tow motor and felt a snap and pain in his back. He noted that the alleged incident occurred at 10:00 p.m. The employing establishment provided appellant with an

[1] 5 U.S.C. § 8101 *et seq.*

authorization for examination and/or treatment (Form CA-16) for his back pain. Appellant stopped work that night and was taken by ambulance to Sacred Heart Hospital, where he was diagnosed with low back pain.

By development letter dated July 11, 2016, OWCP informed appellant that the evidence of record was insufficient to support his claim. It noted that the evidence was insufficient to establish that he experienced the incident or employment factor alleged to have caused injury. The medical evidence of record was insufficient as no diagnosis of any condition resulting from appellant's injury had been provided and there was no medical evidence establishing a firm medical diagnosis with a rationalized opinion addressing causal relationship. Appellant was provided a questionnaire to complete regarding the circumstances of his alleged injury. OWCP afforded him 30 days to submit the necessary evidence.

In response to the development letter, OWCP received additional evidence.

A triage note in the June 18, 2016 hospital chart notes indicated that appellant reported that he was bending over at work, not lifting anything, and while trying to stand back up, he felt spasms start in his low back. He also had abdominal pain and cramping and a sensation of fullness which had been going on for a week. Appellant was admitted for colitis.

A June 18, 2016 ambulance report by an emergency technician noted that appellant stated that he bent over and his back locked up, causing muscle spasms, and cramps. He denied any other pain. A primary impression of back pain lower lumbago and muscle spasm was provided.

In a June 21, 2016 emergency department report, Dr. Braden Wells, an emergency physician, noted that appellant's back pain started one day ago. A diagnosis of acute low back pain was provided.

In a June 30, 2016 report, Dr. Bradley B. Hawkins, a Board-certified family practitioner, indicated that appellant presented with low back pain which started after he had picked up a letter off the floor on June 18, 2016. He noted that appellant was seen at the hospital, but no x-rays were obtained. An impression of low back strain was provided. Dr. Hawkins filled out a work status report indicating that appellant may return to work July 1, 2016 with restrictions. In an undated attending physician's report (Form CA-20), he noted the history of injury of picking up a letter from the floor on June 18, 2016. A diagnosis of low back strain was provided. In a June 20, 2016 report, Dr. Hawkins noted that appellant returned to work within work restrictions. He continued to diagnose low back strain.

By decision dated September 6, 2016, OWCP denied appellant's claim finding that the evidence of record failed to establish that the June 18, 2016 employment incident occurred in the manner alleged. It noted that his statement on the claim form was inconsistent with the account related by his medical providers.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any

disability or specific condition for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.[3]

To determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[4] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he or she sustained an injury in the performance of duty he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. He or she must also establish that such event, incident, or exposure caused an injury.[5] Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which compensation is claimed is causally related to the accepted injury.[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. 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 burden of proof when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[7]

ANALYSIS

The Board finds that appellant has not established fact of injury in the performance of duty, as alleged.

Appellant must establish all of the elements of his claim in order to prevail. He must prove his federal employment, the time, place, and manner of injury, a resulting personal injury, and that his injury arose in the performance of duty. In its September 6, 2016 decision, OWCP

[2] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[3] *Michael E. Smith*, 50 ECAB 313 (1999).

[4] *Elaine Pendleton, supra* note 2.

[5] *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

[6] *Id*.

[7] *Betty J. Smith*, 54 ECAB 174 (2002).

found that appellant had not established that the incident occurred in the manner alleged. The Board finds that his presentation of the facts is not supported by the evidence of record and does not establish his allegation that a specific event occurred in the performance of duty which caused an injury on the date in question.[8]

Inconsistencies in the record cast serious doubt on the validity of appellant's claim. On his claim form, appellant alleged that he injured his back on June 18, 2016 when he bent over to unhook a GPC from the tow motor and felt a snap and pain in his back. OWCP's September 6, 2016 decision denied fact of injury due to inconsistencies between his statement and the account of injury related by his medical providers. The June 18, 2016 triage note indicated that he reported that he was bending over at work, not lifting anything, and while trying to stand back up, he felt spasms start in his low back. However, Dr. Hawkins, in his June 30, 2016 report and work status report and undated attending physician's report, indicated that appellant's low back pain started after he had picked up a letter off the floor on June 18, 2016. The Board notes that his history of injury varies with that provided by appellant and the June 18, 2016 triage note which reported bending only. Thus, it is unclear whether or not appellant had lifted anything on the date in question. Accordingly, there are discrepancies with the evidence received concerning the mechanics of the alleged injury.

While an injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.[9]

On his CA-1 form, appellant alleged that he was unhooking a GPC from the tow motor when the injury occurred. The factual and medical evidence of record provide varying accounts of the June 18, 2016 employment incident. Appellant has provided conflicting versions of the facts surrounding his alleged injury and has not presented any evidence, such as witness statements, to substantiate any of his allegations.[10] As he has not reconciled these contradictions in the record, the Board thus finds that he has not met his burden of proof to establish an employment-related incident at the time, place, and in the manner alleged.[11]

A properly completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003). On return of the case, OWCP shall determine whether the CA-16 form of record in this case properly authorized any medical treatment.

[8] *See B.B.*, Docket No. 15-1113 (issued September 25, 2015); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[9] *B.W.*, Docket No. 13-0244 (issued May 13, 2013).

[10] *R.J.*, Docket No. 08-1653 (issued December 19, 2008).

[11] Given that appellant did not establish an employment incident, further consideration of the medical evidence is unnecessary. *See Bonnie A. Contreras*, 57 ECAB 364, 368 n. 10 (2006).

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a), and 20 C.F.R. §§ 10.606 and 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 June 18, 2016, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the September 6, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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