

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

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**D.S., Appellant**

**and**

**DEPARTMENT OF AGRICULTURE, FOREST  
SERVICE, Douglas, AZ, Employer**

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**Docket No. 15-1742  
Issued: December 3, 2015**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 18, 2015 appellant filed a timely appeal of a July 2, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 May 29, 2014, as alleged.

**FACTUAL HISTORY**

On May 30, 2014 appellant, then a 59-year-old forestry technician, filed a traumatic injury claim (Form CA-1) alleging that on May 29, 2014 he sustained a right knee injury in the performance of duty while "on the second lap accidentally stepped off track and lost my balance

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

and fell.” On May 30, 2014 he was placed on light duty and was released to full duty on July 7, 2014.

In a May 30, 2014 Workers’ and Physicians’ Report of Injury form, Dr. John Waytuk, an osteopath specializing in emergency medicine, advised that appellant complained of right knee pain. He assessed right knee sprain and noted that appellant was able to perform light-duty work. Appellant noted that he tripped and fell on his right knee at Airport Park.

A May 30, 2014 hospital report advised that appellant complained of right knee pain. Examination of the right knee revealed tenderness and limited range of motion. It assessed right knee sprain.

On a June 16, 2014 Workers’ and Physicians’ Report of Injury form, Dr. Linda Weidner, Board-certified in emergency medicine, advised that appellant complained of back pain. She assessed degenerative joint disease of the spine with recent back sprain. Dr. Weidner noted that appellant was able to work with restrictions, including no lifting over 20 pounds, no walking in excess of one mile, and no driving for longer than one hour. Appellant asserted that he believed his back injury was associated with the May 29, 2014 knee injury.

A June 16, 2014 hospital report advised that appellant complained of back pain. It noted that he had a history of arthritis, back injury, and back pain. In an accompanying disability status report, Dr. Weidner advised that appellant was able to return to work that day with no lifting over 20 pounds, no walking in excess of one mile, and no driving longer than one hour. She noted that appellant should be able to return to full duty on July 7, 2014.

In a June 16, 2014 disability status report, Dr. Bruce Curtis, a Board-certified diagnostic radiologist, advised that an x-ray of the lumbar spine revealed multilevel degenerative disc disease, osteophytosis, slight dextroscoliosis at L3, and no acute fracture.

By duty status report (Form CA-17) dated July 7, 2014, Dr. Karen Crockett, a family medicine practitioner, advised that appellant had recovered from a low back and right knee injury. She advised that appellant was able to return to full duty without restrictions. In an accompanying attending physician’s report (Form CA-20), Dr. Crockett advised that appellant had preexisting degenerative disc disease and arthritis. On examination she noted that there was no knee tenderness and full back range of motion. Dr. Crockett checked a box marked “yes” on the form report indicating that she believed appellant’s condition was employment related.

A May 18, 2015 call record advised that appellant requested that his file be reopened to allow payment of an outstanding hospital bill.

By letter dated May 21, 2015, OWCP notified appellant that initially his claim was administratively handled to allow limited medical payments, as it appeared to be a minor injury resulting in minimal or no lost time from work. However, it advised that it was now considering the merits of his claim because medical bills had exceeded \$1,500.00. OWCP advised appellant of the type of factual and medical evidence needed to establish his claim. It specifically asked appellant to explain where he was and what he was doing at the time of the claimed injury, and to provide a detailed description of how the injury occurred. OWCP also asked appellant to provide statements from persons who either witnessed the incident or had immediate knowledge

of it. It allowed him 30 days from the date of the letter to submit responsive evidence. No response was received.

By decision dated July 2, 2015, OWCP denied appellant's claim because the evidence was insufficient to establish that the claimed event occurred as alleged. It noted that appellant had not responded to the development letter and had not described how he was injured at work.

### **LEGAL PRECEDENT**

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,<sup>2</sup> including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.<sup>3</sup> The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.<sup>4</sup>

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. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>5</sup>

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury while in the performance of duty. However, the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action.

### **ANALYSIS**

The Board finds that appellant did not meet his burden of proof to establish an employment-related back and right knee injury on May 29, 2014 because the record does not support his allegation that a specific employment event occurred which caused an injury.

On May 21, 2015 OWCP informed appellant of the type of evidence needed to support his claim that he injured his back and right knee at work on May 29, 2014. This was to include a detailed description of how the injury occurred. This is particularly important where appellant's only description of the incident is from his May 30, 2014 claim form in which he stated that "on the second lap accidentally stepped off track and lost my balance and fell." This general statement is vague and incomplete. Appellant did not submit any further description of how the claimed injury occurred. Without a description of the specific circumstances of the injury, appellant's

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<sup>2</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

<sup>3</sup> *R.C.*, 59 ECAB 427 (2008).

<sup>4</sup> *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *T.H.*, 59 ECAB 388 (2008).

claim lacks specificity regarding the claimed mechanism of injury.<sup>6</sup> In the absence of necessary factual evidence, he failed to establish a *prima facie* claim.

The Board therefore concludes that appellant has not established a traumatic injury in the performance of duty on May 29, 2014 because he failed to adequately establish an employment incident that caused his claimed conditions. Where a claimant does not establish an employment incident alleged to have caused his or her injury, it is not necessary to consider the medical evidence with respect to causal relationship.<sup>7</sup>

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(a) 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 May 29, 2014, as alleged.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 2, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 3, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>6</sup> See *M.F.*, Docket No. 10-1514 (issued March 11, 2011); *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006).

<sup>7</sup> See *S.P.*, 59 ECAB 184 (2007).