

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

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**D.T., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Greensboro, NC, Employer**

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**Docket No. 15-143  
Issued: February 18, 2015**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 23, 2014 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs (OWCP) dated August 4, 2014. 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 established that he sustained an injury on December 6, 2013 in the performance of his federal employment at the time, place, and in the manner alleged.

**FACTUAL HISTORY**

On June 24, 2014 appellant, then a 56-year-old mail handler/equipment operator, filed a Form CA-1 claim for benefits, alleging that he injured his head on December 6, 2013 when he fell and struck the concrete floor after being pushed during a physical altercation with a coworker.

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

The employing establishment controverted the claim noting that the alleged injury occurred due to misconduct or with intent to injure oneself or another.

By letter dated July 1, 2014, OWCP advised appellant that he needed to submit additional factual and medical evidence in support of his claim. It asked him to state where he was and what he was doing at the time his injury occurred, the immediate effects of the injury and what he did immediately thereafter, whether there was any animosity between him and the alleged assailant by reason of a personal association away from work, and whether there was an investigation of the assault made by the employing establishment or the police. OWCP also asked appellant to provide a detailed description as to how his injury occurred, statements from any persons who witnessed the alleged assault, and a full description of the events and circumstances which immediately preceded, led up to, and resulted in the assault. It also requested that he submit a comprehensive medical report from his treating physician describing his symptoms and a medical opinion explaining the cause of any diagnosed condition. OWCP stated that appellant had 30 days to submit the requested information.

In response to OWCP's July 1, 2014 request for information from Dr. Victor E. Korang, Board-certified in internal medicine, appellant submitted: a partial copy of a June 26, 2014 form report indicating that he hit his head on a concrete floor and was diagnosed with postconcussive syndrome; a June 26, 2014 form report from U.S. Health Works stating that he had a head injury and had been diagnosed with postconcussive syndrome; a June 26, 2014 Form CA-17 report outlining work restrictions and indicating that he had an altercation with a coworker which resulted in appellant hitting his head on a concrete floor on December 6, 2013; and Form CA-16 report diagnosing postconcussive syndrome and indicating that appellant had an altercation with a coworker which resulted in him being forcefully pushed and hitting his head on a concrete floor on December 6, 2013.<sup>2</sup>

In the June 26, 2014 form report, Dr. Korang indicated that appellant had an altercation with a coworker which resulted in appellant hitting his head on a concrete floor on December 6, 2013. This altercation resulted in appellant sustaining a head injury. The report diagnosed a postconcussive syndrome and advised that he was experiencing intermittent headaches which were disabling on occasion.

By decision dated August 4, 2014, OWCP denied the claim, finding that appellant had failed to meet his burden to establish fact of injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the

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<sup>2</sup> The Board notes that the employing establishment issued appellant a Form CA-16 on June 24, 2014 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. See *Tracey P. Spillane*, 54 ECAB 608 (2003); *J.M.*, Docket No. 14-1809 (issued December 23, 2014).

<sup>3</sup> *Supra* note 1.

United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>4</sup> 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.<sup>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “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.<sup>6</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup>

OWCP cannot accept fact of injury if there are such inconsistencies in the evidence as to seriously question whether the specific event or incident occurred at the time, place, and in the manner alleged, or whether the alleged injury was in the performance of duty,<sup>8</sup> nor can OWCP find fact of injury if the evidence fails to establish that the employee sustained an “injury” within the meaning of FECA. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee’s statements must be consistent with surrounding facts and circumstances and his subsequent course of action.<sup>9</sup>

### ANALYSIS

In this case, appellant has not established fact of injury because of inconsistencies in the evidence that cast serious doubt as to whether the specific event or incident occurred at the time, place, and in the manner alleged. He did not establish that on December 6, 2013 he fell to the floor after being pushed during a physical altercation with a coworker.

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 cast doubt on an employee’s statements in determining whether he or she has established his or her claim.<sup>10</sup>

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<sup>4</sup> *Joe D. Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *Id.* For a definition of the term “traumatic injury,” see 20 C.F.R. § 10.5(e)(e).

<sup>8</sup> *Pendleton*, *supra* note 4.

<sup>9</sup> See *Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995); *Joseph H. Surgener*, 42 ECAB 541, 547 (1991).

<sup>10</sup> See *Constance G. Patterson*, 42 ECAB 206 (1989).

The Board notes that appellant did not file a claim for the alleged injury for over six months, and apparently did not seek medical treatment for the six-month period either.

The Board also notes that OWCP requested that appellant provide further information regarding the alleged altercation, but appellant did not respond to OWCP's request. Appellant also failed to submit to OWCP a corroborating witness statement in response to its request. This casts additional doubt on his assertion that he injured his head when he fell to the concrete floor after being pushed during a physical altercation with a coworker on December 6, 2013.

Appellant submitted form reports from Dr. Korang dated June 26, 2014 indicating that he sustained headaches due to an alleged December 6, 2013 work injury. The medical reports only recite the facts as told to the treating physician and do not offer any further independent evidence that the altercation which caused the alleged injury actually took place. Form reports that support causal relationship with a checkmark are insufficient to establish the claim, as the Board has held that without further explanation or rationale, a checked box is not sufficient to establish causation.

Therefore, given the absence of evidence regarding how appellant sustained his injury, the Board finds that there is insufficient evidence to establish that he sustained an injury in the performance of duty as alleged.<sup>11</sup>

For the reasons stated above, the Board finds that appellant did not meet his burden of proof to establish fact of injury.

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 OWCP properly found that appellant failed to meet his burden of proof to establish that he sustained an injury in the performance of duty on December 6, 2013.

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<sup>11</sup> See *Mary Joan Coppolino*, 43 ECAB 988 (1992) (where the Board found that discrepancies and inconsistencies in appellant's statements describing the injury created serious doubts that the injury was sustained in the performance of duty).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 4, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 18, 2015  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board