United States Department of Labor
Employees' Compensation Appeals Board

J.W., Appellant	)	
and	)	**Docket No. 16-0773**
	)	**Issued: August 24, 2016**
DEPARTMENT OF THE NAVY, NAVAL FACILITIES ENGINEERING CMD-STATIONS, San Diego, CA, Employer	)	

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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 7, 2016 appellant filed a timely appeal from a January 8, 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 has met his burden of proof to establish that he sustained a traumatic injury on December 10, 2014 in the performance of duty.

FACTUAL HISTORY

On December 17, 2014 appellant, then a 20-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that he sustained back and neck injuries on

[1] 5 U.S.C. § 8101 *et seq.*

December 10, 2014 at the rear loading dock at Building 220. Appellant's supervisor related on the claim form that appellant was loading a cart with sheetrock into the back of a flatbed truck and that he stepped off the edge of the dock (42 inches high) and landed on his left side. Two coworkers reported that they were in the truck while appellant was loading the cart and they did not see him fall, but saw him lying on the ground. They indicated that appellant did not call out for help after he claimed he fell. The supervisor reported that he had not talked to appellant about the incident as he was taken by ambulance and that the employing establishment was investigating the validity of the claim.

In a January 12, 2015 statement, appellant indicated that he was emptying a loaded bucket of sheet rock from Building 220 off the back dock and pushing the bucket onto the flatbed utility truck. Due to the lip from the dock to the lift gate, he was having trouble getting the bucket on the lift gate. While trying to get the bucket on the flatbed truck, appellant stepped to the side thinking he had more room, felt his ankle roll, missed a step and fell. He felt strong pain and stiffness in his lower back, left shoulder and right hand.

Along with the claim, appellant submitted: physical therapy evaluation forms, diagnostic tests, work status forms and patient visit information.

In a December 18, 2014 report, Dr. Timothy Wilken, a family practitioner, indicated appellant was injured on the job site on December 13, 2014. Appellant reported that his current episode of pain started five days ago. The event which precipitated this pain was a fall off a dock into a metal dumpster. Appellant was taken to the emergency room and told his x-rays did not show a fracture. Dr. Wilken diagnosed lumbar strain, muscle spasm, hand strain, shoulder strain, back pain, left hand pain, and left shoulder pain and opined with a check mark "yes" that his diagnoses were consistent with appellant's account of injury. Medical report summaries of December 18, 23, and 30, 2014, and January 6, 2015 were provided along with requests for authorization.

In a January 20, 2015 report, Dr. Wilken advised that appellant had been temporarily totally disabled since his fall on December 10, 2014. He sustained multiple contusions when he fell off a dock at work and landed very hard in a metal dumpster. Dr. Wilken provided a history of appellant's treatments and indicated that appellant would be released to modified duty the next day.

In a February 26, 2015 report, Dr. Wilken diagnosed work-related lumbar strain, shoulder strain, and hand strain. He indicated that appellant could return to regular work and discharged him from care.

In a January 21, 2015 letter, the employing establishment controverted the claim. It submitted pictures taken at the scene immediately after the incident by appellant's supervisor and notes that they failed to show a certainty of "mechanism of injury" as described by appellant and left open the question of how he could have possibly slipped and fell to one side of the truck unanswered. The employing establishment further noted that there was no mention of a metal dumpster on the CA-1 form, appellant's statement, and the emergency room doctor's report. Furthermore, there did not appear to be any swipe marks where the handprint indicated a fall into the dumpster. Enclosed was a January 12, 2015 statement from appellant's supervisor.

By letter dated March 25, 2015, OWCP advised appellant of the deficiencies in his claim and provided him the opportunity to submit additional factual and medical evidence. Appellant was asked to submit evidence to support how the injury occurred as there was insufficient factual evidence to establish that he actually experienced the employment factor(s) alleged to have caused injury and to respond to questionnaire provided in the letter. He was afforded 30 days to submit the requested information. No additional information was received.

By decision dated May 1, 2015, OWCP denied the claim as the evidence did not support that the injury or event(s) occurred as alleged. It specifically found that there was no clear narrative regarding the specific details of how appellant became injured and the medical reports from December 10 through 30, 2014 had no narrative about how appellant developed his conditions.

On October 13, 2015 OWCP received an appeal request form noting appellant's October 5, 2015 request for reconsideration. In an October 4, 2015 letter, also received on October 13, 2015, appellant requested reconsideration and indicated that he did not receive notice of the May 1, 2015 decision until the end of May, due to the fact that he had been evicted from his residence. He stated that he never received the notice of deficiencies and therefore never responded to the request for additional information to support his claim. Appellant indicated that the initial incident report from the employing establishment was missing and that he had tried to contact the person in charge of that report, but had not received a return telephone call. He indicated that he was picked up by the American Medical Response in an ambulance at the location of the injury and attached the documentation for review.

A December 10, 2014 report from the American Medical Response indicated that appellant was found lying left-lateral on concrete. Appellant stated that he fell backward off of a four foot concrete loading dock. Care provided to appellant was documented.

In the December 10, 2014 emergency department report, Dr. Craig A. Walls, a Board-certified emergency room physician, provided an impression of contusion. The history of injury provided by appellant was that he missed a stair and fell onto his lower back and tried to catch himself with his shoulder. X-rays of the lumbar spine, sacrum and coccyx revealed no fracture and no dislocation. Appellant was discharged and advised to follow-up with a primary care physician. Copies of December 10, 2014 diagnostic studies were also provided.

A duplicate copy of Dr. Wilken's February 26, 2015 report was also provided.

By decision dated January 8, 2016, OWCP denied modification of its May 1, 2015 decision. It found that there was still no evidence to factually establish that the injury occurred as alleged. OWCP further noted that the medical evidence of record was insufficient to establish an injury causally related to the alleged event.

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 and/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 an occupational disease.[3]

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[4] 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.[5]

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. An employee has the burden of establishing the occurrence of an injury at the time, place, and in the manner alleged by a preponderance of the reliable, probative, and substantial evidence.[6] 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. 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 has established a *prima facie* case.[7] However, an employee's statement 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.[8]

[2] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[3] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

[5] *T.H.*, 59 ECAB 388 (2008).

[6] *Charles B. Ward*, 38 ECAB 667 (1987).

[7] *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[8] *Thelma S. Buffington*, 34 ECAB 104 (1982).

ANALYSIS

Appellant has not submitted sufficient evidence to show that an employment incident occurred as alleged in the performance of his duties as a maintenance mechanic on December 10, 2014 as his claim lacks specificity regarding the claimed mechanism of injury.[9]

Appellant did not complete the claim form, as he was taken to the emergency department by ambulance. However, two coworkers, who were in the truck while appellant was loading the cart, indicated that they did not see him fall and only saw him lying on the ground. This is consistent with the ambulance report of how they found him. In his January 12, 2015 statement, appellant indicated that he was emptying a loaded bucket of sheet rock from Building 220 off the back dock and was pushing the bucket onto the flatbed utility truck. Due to the lip from the dock to the lift gate, he was having trouble getting the bucket on the lift gate so he stepped to the side thinking he had more room, felt his ankle roll and missed a step and fell. The history of injury reported to Dr. Walls, the emergency room physician on the day of the injury, was that he missed a stair and fell onto his lower back and tried to catch himself with his shoulder. He later told Dr. Wilken that he had fallen off a dock into a metal dumpster while at work. Appellant did not clearly describe to either emergency personnel, the emergency room physician, or Dr. Wilken the specific details of how he became injured. While the medical reports of record provide several diagnoses and detail treatment history, there is no medical narrative as to how appellant's medical conditions resulted or developed. Dr. Wilken's opines in his December 18, 2014 report and January 20, 2015 letter that appellant's condition and total disability is consistent with the injury, but fails to provide a detailed statement of the mechanism of injury to account for the multiple injuries claimed. Medical opinions based on an incomplete or inaccurate history are of diminished probative value.[10]

Furthermore, appellant did not respond to OWCP's request that he describe the employment incident or factors that caused his claimed injury. He subsequently claimed he never received OWCP's notice of deficiencies as he was evicted from his home. OWCP's regulations provide that a copy of the decision shall be mailed to the employee's last known address.[11] The Board has found that, in the absence of evidence to the contrary, a letter properly addressed and mailed in the due course of business, such as in the course of OWCP's daily activities, is presumed to have arrived at the mailing address in due course.[12] There is no evidence of record that either the development letter or the initial decision was undeliverable.

[9] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006).

[10] *See M.W.*, 57 ECAB 710 (2006).

[11] 20 C.F.R. § 10.127 provides, a copy of the decision shall be mailed to the employee's last known address. *See Kenneth E. Harris*, 54 ECAB 502 (2003).

[12] *See Shakeer Davis,* 52 ECAB 448 (2001). Where OWCP mailed a copy of the preliminary decision to both appellant and counsel at their addresses of record. No evidence had been presented to rebut the presumption of receipt. Thus, it is presumed that the preliminary decision reached both appellant and her attorney.

The Board finds that appellant has failed to provide sufficient factual and medical evidence to establish a *prima facie* claim.[13]

On appeal, appellant argues that he was injured on the job and that his medical conditions are work related. As noted, the evidence of record did not sufficiently establish that an employment incident occurred on December 10, 2014 as alleged. As appellant did not establish that an incident occurred, it is not necessary to consider the medical evidence with regard to causal relationship.[14]

CONCLUSION

The Board finds that appellant did not establish that he sustained a traumatic injury in the performance of duty on December 10, 2014.

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy 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

[13] *See O.W.*, Docket No. 09-2110 (issued April 22, 2010).

[14] *See id.*