

ISSUES

The issues are: (1) whether appellant has established an injury in the performance of duty on July 4, 2014; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 18, 2014 appellant, then an 18-year-old midshipman student,³ filed a traumatic injury claim (Form CA-1) alleging a head injury on July 4, 2014. When he was receiving punishment along with his company the punishment involved wearing a bathrobe, raincoat, and boots, and having to wrap a blanket around himself. According to appellant, he woke up laying on the floor, did not remember falling, and was told he had passed out and hit his head on the floor.

Appellant submitted an employing establishment health unit note dated July 5, 2014. The note was prepared by a nurse and countersigned by Dr. Ronald Feinstein, a Board-certified pediatrician. The note recorded that appellant was being punished for having a drawstring hanging out of his shorts. Appellant was ordered to put on a white shirt, bathrobe, raincoat, and black boots and then wrap a blanket around himself along with the remainder of the company. After these orders he next remembered waking up on the floor. First responders were called to the scene of his fall and an emergency medical technician (EMT) was noted to have seen appellant on a hallway floor in the items of clothing previously described. Dr. Feinstein noted that appellant was status post syncope, instructed him to return immediately for a headache, pain, or lightheadedness. He also noted that an eyewitness to appellant's fall reports that he fell to the ground striking his head against the floor and that his head "bounced" off the floor when it hit.

On September 3, 2014 appellant submitted hospital reports indicating that he had received hospital treatment on July 5 and 15, 2014. A July 15, 2014 emergency treatment report provides a diagnosis of concussion and contains an illegible signature. In a report dated July 16, 2014, Dr. Robert Duarte, a Board-certified neurologist, provided a history that appellant had passed out 10 days earlier and hit his head resulting in a loss of consciousness after being required to wear multiple clothes. He provided results on examination and diagnosed concussion, probable post-traumatic migraine, and syncope. Dr. Duarte opined that the examination is not consistent with a neurological etiology for his left-sided weakness/numbness, but still recommended a magnetic resonance imaging (MRI) scan of the brain to document pathology. By report dated July 23, 2014, he provided results on examination and noted that appellant reported a minimal headache, but essentially all symptoms had resolved.

By letter dated September 22, 2014, OWCP noted that his claim initially appeared to be a minor injury that resulted in minimal or no time lost from work and therefore the employing establishment had not controverted continuation of pay. However, the claim was now reopened for consideration because medical bills exceeded \$1,500.00.

³ Midshipmen at the Merchant Marine Academy are covered under the provisions of FECA. See *Rolf W. Beere*, 8 ECAB 186 (1955).

OWCP requested that appellant submit additional factual and medical evidence in support of his claim. As to factual evidence, it asked appellant for an explanation as to the delay in filing the claim, whether appellant had any symptoms prior to the alleged incident, and whether there were any other injuries prior to notification to the supervisor. Appellant did not respond to the September 22, 2014 letter.

By decision dated October 24, 2014, OWCP denied appellant's claim for compensation. It found the factual element of the claim had not been established, noting that appellant had not responded to the request for additional information. OWCP also noted that appellant did not submit probative medical evidence establishing an employment injury.

On November 5, 2014 appellant requested reconsideration. He submitted employing establishment health unit notes. In a note dated July 17, 2014, Dr. Feinstein diagnosed status postconcussion syndrome and noted that appellant continued to have symptoms. In a note dated July 21, 2014, Dr. Marigold Castillo, a Board-certified pediatrician, noted that appellant's concussion was improving despite continuation of symptoms.

By decision dated November 19, 2014, OWCP denied appellant's request for reconsideration finding that the evidence of record was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."⁴ The phrase "sustained while in the performance of duty" in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment."⁵ An employee seeking benefits under FECA has the burden of proof to establish that he or she sustained an injury while in the performance of duty.⁶ In order 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. The second component is whether the employment incident caused a personal injury, and generally this can be established only by rationalized medical evidence.⁷

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, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of

⁴ 5 U.S.C. § 8102(a).

⁵ *Valerie C. Boward*, 50 ECAB 126 (1998).

⁶ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁷ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

action.⁸ An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁹ 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, if otherwise unexplained, cast doubt on an employee's statements.¹⁰ However, an employee's statement regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong or persuasive evidence.¹¹

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty, and supported by sound medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹²

ANALYSIS -- ISSUE 1

The Board finds that appellant has presented sufficient evidence to meet his burden of proof to establish that the July 4, 2014 incident occurred as alleged.

In its decision of October 24, 2014, OWCP noted that as appellant failed to explain how his work-related activity caused, aggravated, or contributed to his medical condition, the 12-day delay in reporting his claim made the circumstances surrounding his injury unclear.

A review of the evidence of record establishes that appellant sustained a traumatic fall in the performance of duty when he was required to wear multiple articles of clothing and wrap a blanket around himself. He hit his head against the floor and lost consciousness when his head bounced off of the floor. Emergency medical treatment was immediately summoned and he was transported to a local medical facility for care. The EMT reported finding appellant on the floor in a condition consistent with the description of injury on the Form CA-1. Dr. Feinstein contemporaneously noted symptomology consistent with a head injury and loss of consciousness due to a traumatic fall. Moreover, the initial treatment note includes an eyewitness statement describing the severity of the injury, including witnessing his head bounce off of the floor and a resulting and immediate loss of consciousness. There are no inconsistencies in the allegations of the injurious event and therefore there is no basis to cast serious doubt upon the validity of the incident of July 4, 2014. The employing establishment has not controverted the incident as alleged in this claim. Therefore the Board finds that appellant has met his burden of proof to establish that the incident on July 4, 2014 occurred as alleged.

⁸ See *Betty J. Smith*, 54 ECAB 174 (2002).

⁹ *Id.*

¹⁰ See *Linda S. Christian*, 46 ECAB 598 (1995).

¹¹ See *Gregory J. Reser*, 57 ECAB 277 (2005).

¹² *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

Given that appellant has established that the July 4, 2014 incident occurred as alleged, the question becomes whether the medical evidence establishes a causal relationship between the claimed condition and the accepted incident. The Board will remand the case for OWCP to issue a *de novo* decision as to whether the evidence of record is sufficient to establish a head injury as a result of the accepted incident.¹³

CONCLUSION

The Board finds that this case is not in posture for decision. As appellant has established the July 4, 2014 incident occurred as alleged, OWCP must review the evidence of record to determine whether he has established a head injury resulted from the accepted incident. After such further development as is deemed necessary, OWCP shall issue a *de novo* decision.

ORDER

IT IS HEREBY ORDERED THAT the November 19 and October 24, 2014 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision.¹⁴

Issued: July 25, 2016
Washington, DC

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

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

¹³ Based upon the disposition of the first issue, the second issue presented for consideration by the Board is found to be moot and therefore need not be addressed in this decision.

¹⁴ James A. Haynes, Alternate Judge, participated in the preparation of this decision but was no longer a member of the Board effective November 16, 2015.