United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 18-1456**
	)	**Issued: July 3, 2019**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Phoenix, AZ, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 27, 2018 appellant, through counsel, filed a timely appeal from a May 21, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on January 18, 2017, as alleged.

FACTUAL HISTORY

On January 19, 2017 appellant, then a 58-year-old housekeeping aid, filed a traumatic injury claim (Form CA-1) alleging that, on January 18, 2017, he dislocated fingers on his left hand while in the performance of duty because a scrubber was "rigged by someone" and did not operate properly.

On March 17, 2017 appellant filed a claim for compensation (Form CA-7) for wage loss for the period March 9 to 20, 2017.

In a development letter dated March 24, 2017, OWCP informed appellant that initially his claim appeared to be for a minor injury that resulted in minimal or no lost time from work and, as such, payment of a limited amount of medical expenses was administratively approved. It explained, however, that it had reopened the claim for formal consideration of the merits upon receipt of his claim for wage-loss compensation. OWCP requested additional factual and medical evidence and afforded appellant 30 days to respond.

In a January 19, 2017 report, Dr. Todd K. Farnworth, a Board-certified plastic surgeon, diagnosed sprain of proximal interphalangeal (PIP) joints of the left index and middle finger. He noted that appellant was injured "while working bumping [his] hand against a door frame suffering a dislocation of the PIP joint area of the left index and middle fingers." Appellant reportedly relocated his fingers himself and then presented to the emergency department and had x-rays completed. His fingers had been buddy taped together since January 18, 2017, the date of the alleged injury. Dr. Farnworth recommended splinting in a slightly flexed position for two more weeks followed by physical therapy.

On January 23, 2017 Dr. Farnworth indicated that appellant, who worked in housekeeping and "cleans floors nightly," sustained a work-related injury when his "hand hit the metal door frame due to equipment malfunction." He opined that appellant's blunt trauma with continued pain and limited motion affected his functional use.

In a statement on an employing establishment report of contact form dated April 6, 2017, E.M. stated that he was appellant's coworker and in the month of January 2017 they were both "top scrubbing and burnishing the Emerald Clinic located on the 1st floor of the ACC." He reported that appellant told him that "he needed to go to the [e]mergency [r]oom because his diabetes was acting up and vision was getting blurry." A few hours later, E.M. went out to smoke and appellant came out not too long after and told him that he had fractured his fingers. He stated that he personally knows that appellant is lying because a few months prior, appellant explained that his fingers would never get fixed because of his past experiences. E.M. further indicated that he was working side-by-side with appellant the entire time and the machine worked just fine. He noted that they used that machine on a day-to-day basis and in no way possible could the machine be jammed. E.M. stated that appellant had informed the lead, J.J., that he had plugged in the

machine and it just took off and his hand got stuck, but appellant had never mentioned it to him and only stated that he needed to see a physician in regards to his diabetes.

Appellant underwent a left middle finger PIP volar plate arthroplasty on April 19, 2017.

By decision dated May 3, 2017, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the January 18, 2017 incident occurred, as alleged.

On February 27, 2018 appellant, through counsel, requested reconsideration and submitted additional medical evidence. He also submitted a narrative statement asserting that E.M.'s statement that his left hand was already injured before he was hired was untruthful.

An employee health note dated January 19, 2017 indicated that appellant worked as a member of the floor crew to report an injury and was initially seen in the emergency room the night before. Appellant reported that after prepping the floor to be scrubbed he put the pad down to place the scrubber on it and when he turned the scrubber on, it snatched away from him and his hand was on the handle and it smashed it against the door jam. He alleged that somebody modified the scrubber and put a cap on that made the scrubber slide and pull away. Appellant noted that his left middle finger was bent and he tried to pull and straighten it, but was unable. He noted that the other two fingers (index and ring) were sore from hitting the door jam.

By decision dated May 21, 2018, OWCP denied modification of its prior decision.

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 timely filed within the applicable time limitation period of FECA,[3] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4] 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.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. A fact of injury determination is based on two elements. 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal

[3] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

injury. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition relates to the employment incident.[6]

An employee has the burden of proof to establish the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence. 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.[7] 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 or her subsequent course of 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. 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 serious doubt on an employee's statement in determining whether a *prima facie* case has been established.[9]

ANALYSIS

The Board finds that appellant has met his burden of proof to establish that the January 18, 2017 employment incident occurred in the performance of duty, as alleged.

On his claim form, appellant alleged that he "dislocated fingers on left hand" on January 18, 2017 because a scrubber was "rigged by someone" and did not operate properly. With his request for reconsideration, appellant further submitted a January 19, 2017 employee health note which included his own statements that "after prepping the floor to be scrubbed in the Emerald Clinic, I put the pad down to put the scrubber on it. When I [turned] the scrubber on, the scrubber snatched away from me and my hand was on the handle and it smashed it against the door jam. When I looked, somebody modified the scrubber and put a cap on that made the scrubber slide and pull me away. My [left] middle finger was bent and I tried to pull and straighten it, but I was unable to straighten it. The other 2 fingers (index and ring) are sore from hitting the door jam." OWCP denied his claim as it found that he had not established that the January 18, 2017 employment incident occurred, as alleged.

The Board finds that the evidence of record does not contain inconsistencies sufficient to cast serious doubt on appellant's version of the occurrence of the employment incident.[10]

[6] *Id.*

[7] *See Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

[8] *Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995).

[9] *L.B.*, Docket No. 17-2023 (issued August 21, 2018).

[10] *C.V.*, Docket No. 15-0615 (issued September 13, 2016).

Appellant has consistently described the employment incident as occurring on January 18, 2017 when he turned a scrubber on and it smashed his left hand against a door jam.

As noted, 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 and persuasive evidence.[11] While appellant's coworker, E.M., stated that appellant needed to go to the emergency room due to his diabetes and he personally knew that appellant was lying, he also corroborated the fact that he and appellant were both "top scrubbing and burnishing the Emerald Clinic located on the 1st floor of the ACC." The Board finds that, under the circumstances of this case, appellant's allegations of sustaining a left hand injury due to using a scrubber at work have not been refuted by strong or persuasive evidence and there are no inconsistencies sufficient to cast serious doubt on his version of the employment incident.[12] The employing establishment did not controvert the claim and he sought medical treatment on January 19, 2017 the day after the alleged work incident.

As appellant has established that the January 28, 2017 employment incident occurred as alleged, further consideration of the medical evidence is necessary.[13] For these reasons, the case will be remanded to OWCP to evaluate the medical evidence and determine whether he sustained a medical condition or disability causally related to the accepted January 18, 2017 employment incident.[14] After any further development as it deems necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a traumatic injury in the performance of duty on January 18, 2017, as alleged. The further finds, however, that the case is not in posture for decision with regard to causal relationship between appellant's medical condition(s) and the accepted January 18, 2017 employment incident.

[11] *Supra* note 7; *see also M.T.*, Docket No. 17-1934 (issued September 19, 2018).

[12] *Supra* note 10.

[13] *M.D.*, Docket No. 18-1365 (issued March 12, 2019).

[14] *See supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 3, 2019
Washington, DC

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

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

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