

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

G.W., Appellant)
)
)
and) **Docket No. 19-0260**
) **Issued: July 10, 2020**
)
DEPARTMENT OF THE INTERIOR, BUREAU)
OF INDIAN AFFAIRS, Neopit, WI, Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 15, 2018 appellant filed a timely appeal from an August 10, 2018 merit decision and an October 4, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ The Board notes that, during the pendency of this appeal, OWCP issued an August 15, 2019 decision which denied modification of the August 10, 2018 denial of the claim. The Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s). 20 C.F.R. §§ 501.2(c)(3), 10.626; *see J.W.*, Docket No. 19-1688, n.1 (issued March 18, 2020); *J.A.*, Docket No. 19-0981, n.2 (issued December 30, 2019); *Arlonia B. Taylor*, 44 ECAB 591 (1993); *Douglas E. Billings*, 41 ECAB 880 (1990). Consequently, OWCP's August 15, 2019 decision is set aside as null and void.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a traumatic injury causally related to the accepted March 6, 2018 employment incident; 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 March 7, 2018 appellant, then a 58-year-old truck driver, filed a traumatic injury claim (Form CA-1) alleging that on March 6, 2018 he injured his back, lacerated his ear, and bumped his head as a result of a motor vehicle accident (MVA) while in the performance of duty. He indicated that the truck he was driving jackknifed rounding a corner. On the reverse side of the form the employing establishment acknowledged that appellant was in the performance of duty at the time of the MVA.

In a first report of injury/illness form dated March 7, 2018, appellant described the incident of March 6, 2018, noting that his truck had jackknifed on a slippery road. He advised that he had sustained a lacerated ear, bumps, bruises, and a possible back injury as a result of the MVA. Appellant provided a form indicating that he had refused medical treatment offered by the employing establishment. The form specified that he had been taken by ambulance to a medical facility.

In a development letter dated July 10, 2018, OWCP informed appellant that he had not submitted sufficient evidence to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit additional evidence and respond to its inquiries. No further evidence was received.

By decision dated August 10, 2018, OWCP denied appellant's traumatic injury claim finding that he had not submitted medical evidence containing a medical diagnosis in connection with the accepted March 6, 2018 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 10, 2018 appellant requested reconsideration. In a statement dated August 23, 2018, he indicated that he had submitted paperwork to the employing establishment's Human Resources Department. Appellant advised that he was only requesting payment of medical expenses, noting that he had not been injured in the accident. He described the incident of March 6, 2018 and asserted that he had enclosed copies of medical records.⁴

By decision dated October 4, 2018, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

⁴ On September 25, 2018 appellant again requested reconsideration of the decision of August 10, 2018.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA,⁶ 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.⁷ 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.⁸

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.⁹ Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.¹⁰ The second component is whether employment incident caused a personal injury.¹¹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident.¹²

ANALYSIS -- ISSUE 1

The Board finds that appellant has met his burden of proof to establish an ear laceration and contusions causally related to the accepted March 6, 2018 employment incident.

Appellant sustained injury as a result of a March 6, 2018 MVA and required emergency transportation and treatment. OWCP procedures provide that in cases where there is a serious injury from an MVA, amongst other types of incidents, and the employing establishment does not dispute the facts of the incident alleged, that the claim may be accepted for conditions even without

⁵ *Id.*

⁶ *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *J.S.*, Docket No.18-0657 (issued February 26, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *R.R.*, Docket No.18-0914 (issued February 24, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

¹⁰ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

¹¹ *Id.*

¹² *See S.S.*, *supra* note 9; *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

a medical report with other more serious conditions being developed through obtaining medical evidence.¹³ OWCP procedures further provide that, if all of the following criteria are satisfied, a claim may be accepted without a medical report: (1) The condition reported is a minor one which can be identified on visual inspection by a lay person (*e.g.*, burn, laceration, insect sting, or animal bite); (2) The injury was witnessed or reported promptly, and no dispute exists as to the fact of injury; and (3) No time was lost from work due to disability.¹⁴

The accepted incident was an MVA in which appellant's truck jackknifed on a slippery road which left appellant injured and in need of emergency medical services. Upon obtaining emergency medical treatment, it was noted that he sustained an ear laceration and contusions. Appellant also complained of back pain. The record provides a consistent history of injury upon which no dispute exists, and the employing establishment acknowledged that the MVA occurred in the performance of duty, as alleged. Appellant has not alleged time loss from employment following the accident, but has sought reimbursement for the medical costs associated with transportation and treatment. The Board finds that this evidence is sufficient to establish that appellant sustained an ear laceration and contusions causally related to the accepted March 6, 2018 employment incident. The Board further finds that he has not submitted sufficient medical evidence to support any back injury or other condition.

As appellant has established an ear laceration and contusions as accepted employment-related conditions in his claim, the Board will reverse the August 10, 2018 decision and remand the case for payment of medical transportation and treatment costs.¹⁵

CONCLUSION

The Board finds that appellant has met his burden of proof to establish an ear laceration and contusions causally related to the accepted March 6, 2018 employment incident.

¹³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6 (June 2011). See also *R.E.*, Docket No. 18-0515 (issued February 18, 2020).

¹⁴ See *id.* at Chapter 2.805.3(c) (January 2013). See also *L.T.*, Docket No. 15-1922 (issued August 23, 2016).

¹⁵ Based upon the disposition of issue 1, issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the October 4 and August 10, 2018 decisions are reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 10, 2020
Washington, DC

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

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

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