

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

G.F., Appellant)	
)	
and)	Docket No. 21-0732
)	Issued: December 17, 2021
DEPARTMENT OF VETERANS AFFAIRS,)	
WEST ROXBURY VA MEDICAL CENTER,)	
West Roxbury, MA, Employer)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 19, 2021 appellant filed a timely appeal from a March 17, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 a traumatic injury in the performance of duty on May 18, 2019, as alleged.

FACTUAL HISTORY

On November 30, 2020 appellant, then a 63-year-old gardener, filed a traumatic injury claim (Form CA-1) alleging that on May 18, 2019 at approximately 10:00 a.m. he sprained his

¹ 5 U.S.C. § 8101 *et seq.*

knee when he stepped out of a truck and onto uneven ground, twisting his knee while in the performance of duty. On the reverse side of the claim form the employing establishment acknowledged that appellant was in the performance of duty when the injury occurred and indicated that its knowledge of the facts comported with appellant's statement. Appellant stopped work on March 22, 2020 and returned to work on May 28, 2020.

In a development letter dated December 3, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested evidence.

Appellant submitted medical reports dated from November 21, 2016 to November 8, 2017 detailing his treatment for a left knee injury he sustained after stepping out of his truck while at work. He explained that his left foot was planted on the ground and his knee internally rotated, causing him pain to his left knee. Appellant treated his injury with rest, ice and ibuprofen and also missed days of work as a result. On review of x-ray scans Dr. Steven Makovitch, Board-certified in physical medicine and rehabilitation, diagnosed left knee pain, left knee osteoarthritis and a possible left knee meniscal injury.

In medical reports dated May 28 to October 23, 2019, Dr. Sucheta Doshi, Board-certified in family medicine, observed appellant's history of left knee pain relating to his previous 2016 injury and noted that he injured his left knee again when he planted his left knee and turned abruptly. She indicated that he missed work on May 16 and 17, 2019 as a result. Dr. Doshi diagnosed a complex tear of the medial collateral ligament, a grade one sprain of the medial collateral ligament, and tricompartmental degenerative cartilage defects.

In a December 22, 2020 letter, the employing establishment controverted appellant's claim, arguing that it was not clear whether he sustained his injury on May 18 or 28, 2019. It noted that the medical evidence demonstrated that he previously injured his left knee in 2016 and also provided an inconsistent history of his injury in relation to the alleged May 18, 2019 employment incident.

By decision dated January 5, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as he described. It noted that he had not responded to its December 3, 2020 development questionnaire or provided information clarifying the alleged May 18, 2019 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 26, 2021 appellant requested reconsideration of OWCP's January 5, 2021 decision.

Appellant submitted medical reports dated from November 21, 2016 to April 25, 2018 detailing his treatment for his November 16, 2016 left knee injury.

In a July 31, 2020 diagnostic report, Dr. Anupma Jati, a Board-certified diagnostic radiologist, performed an x-ray scan of appellant's left knee, observing chondrocalcinosis and mild degenerative changes.

In an October 19, 2020 medical report, Dr. Matthew Sabatino, a Board-certified orthopedic surgeon, recounted appellant's history of left knee pain beginning approximately three years prior when he stepped out of a truck at work. He reviewed subsequent medical treatment and diagnosed left knee pain due to mild osteoarthritis and potentially irritation from a meniscal injury.

In a January 20, 2021 statement, appellant clarified that his original left knee injury occurred on November 21, 2016 when he stepped out of a truck onto an uneven incline. He indicated that his left knee twisted, felt immediate pain and was unable to put any weight on his left leg. Appellant noted that he had not had any problems with his left knee prior to this injury. He went straight to the emergency room after his injury and explained that his knee felt okay after a week and had since swelled up every other month. In separate statements of even date, P.C., his coworker, and J.M., his supervisor, confirmed that they were working with him on the morning on November 21, 2016 when he injured his left knee. J.M. noted that he noticed that he was limping and subsequently helped him to the emergency room and helped to drive him home.

In a January 21, 2021 letter, Dr. David Suskin, Board-certified in internal medicine, explained that appellant injured his left knee on November 21, 2016 when he stepped out of his truck at work. He underwent a magnetic resonance imaging (MRI) scan of his left knee that revealed a complex tear of the posterior horn of the medial meniscus and tricompartmental degenerative changes. Appellant then experienced a recurrence of pain in 2020. He was referred to orthopedics where he underwent another MRI scan that showed degenerative changes and full-thickness cartilage loss.

By decision dated March 17, 2021, OWCP denied modification of its January 5, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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

² *Id.*

³ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *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 *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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.⁶ Fact of injury consists of two components that must be considered in conjunction with one another. 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.⁷ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁸

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, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁹ The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence that 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 sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.¹⁰ An employee's statements 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.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury in the performance of duty on May 18, 2019, as alleged.

Appellant has not established the factual component of his claim as he has insufficiently explained when the claimed injury occurred.¹² In his November 30, 2020 Form CA-1, he indicated that on May 18, 2019 he injured his left knee when he stepped out of a truck onto uneven ground and twisted his knee. Appellant did not submit a detailed account of the alleged injury or any additional corroborating factual evidence describing how he sustained an injury on May 18, 2019. The Board has held that such a vague recitation of facts does not support a claimant's allegation that a specific event occurred to cause a work-related injury.¹³

⁶ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁷ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

¹⁰ *Betty J. Smith*, 54 ECAB 174 (2002); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

¹¹ *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹² *See E.C.*, Docket No. 19-0943 (issued September 23, 2019).

¹³ *M.C.*, *supra* note 11; *M.B.*, Docket No. 11-1785 (issued February 15, 2012).

OWCP, in its December 3, 2020 development letter, informed appellant of the type of factual and medical evidence needed to establish his traumatic injury claim. It requested that he complete an attached questionnaire and provide a detailed factual description of the alleged employment incident. Appellant, however, did not provide a completed questionnaire and there is no statement in the record describing the specific alleged employment-related incident.¹⁴

The Board notes that appellant submitted statements dated January 20, 2021 in which he and two of his coworkers indicated that he had previously injured his left knee at work on November 21, 2016. However, this evidence does not provide any discussion concerning the alleged May 18, 2019 employment incident. Thus, the Board finds that he has not established that he sustained an injury in the performance of duty on May 18, 2019 as alleged because he did not submit sufficient evidence to establish that he actually experienced the incident at the time and place, and in the manner alleged.¹⁵

Appellant has not provided a sufficient description of the alleged employment incident and the mechanism by which he sustained an injury; therefore, the Board finds that he has not met his burden of proof.¹⁶ As appellant has not met his burden of proof to establish that an incident occurred in the performance of duty, as alleged, it is unnecessary to address the medical evidence of record regarding causal relationship.¹⁷

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 appellant has not met his burden of proof to establish a traumatic injury in the performance of duty on May 18, 2019, as alleged.

¹⁴ See *M.F.*, *supra* note 9.

¹⁵ *Supra* note 12.

¹⁶ *H.D.*, Docket No. 15-1698 (issued May 4, 2016).

¹⁷ *J.C.*, Docket No. 19-0542 (issued August 14, 2019); see *M.P.*, Docket No. 15-0952 (issued July 23, 2015); *Alvin V. Gadd*, 57 ECAB 172 (2005).

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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