

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

L.Y., Appellant)	
)	
and)	Docket No. 21-0221
)	Issued: June 30, 2021
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Albany, NY,)	
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
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On December 1, 2020 appellant filed a timely appeal from an October 28, 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 September 22, 2017, as alleged.

FACTUAL HISTORY

On October 2, 2017 appellant, then a 56-year-old postal support employee (PSE) mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 22, 2017 he injured his right foot when a door/shelf of a postal container (postcon) fell on it, causing

¹ 5 U.S.C. § 8101 *et seq.*

swelling, while in the performance of duty. On the reverse side of the claim form the employing establishment checked a box marked “No” to indicate that he was not in the performance of duty when his injury occurred and noted that he had not reported his injury until 10 days after it occurred. Appellant stopped work on September 22, 2017.²

An October 2, 2017 x-ray of the right foot, performed by Dr. Shirish Parikh, a Board-certified diagnostic radiologist, revealed soft tissue swelling. Dr. Parikh noted that a drawer fell on appellant’s right foot on September 22, 2017.

In an October 2, 2017 work status note, Shannon O’Meara, a family nurse practitioner, excused appellant from work for the period October 2 through 4, 2017 and indicated that he could return to work on October 5, 2017.

In an October 5, 2017 work status note, Dr. Alexandr Sazon, Board-certified in family medicine, excused appellant from work for the period October 5 through 8, 2017 and indicated that he could return to work on October 9, 2017.

In an October 9, 2017 prescription slip, Dr. Nita Parikh, Board-certified in internal medicine, excused appellant from work for the period October 9 through 17, 2017.

An October 11, 2017 x-ray of the right foot was unremarkable.

In an October 11, 2017 emergency department report, Dr. Beth Cadigan, Board-certified in emergency medicine, noted that appellant reported that a piece of equipment fell on his right foot at work on October 1, 2017. Appellant also reported that the doors of a cabinet fell onto his right foot at work on September 22, 2017, but that he did not have any significant injury and did not initially seek medical attention. On October 1, 2017 Dr. Cadigan noted that appellant’s right foot became significantly swollen, causing him to treat at an urgent care center and later seek care with his primary care physician. She indicated that an x-ray revealed no fractures.

On October 12, 2017 the employing establishment executed an authorization for examination and/or treatment (Form CA-16). The Form CA-16 listed the date of injury as September 22, 2017 and noted that a metal shelf on the postcon fell on his foot.

Appellant also submitted a continuation of pay nurse report dated October 16, 2017, which indicated that he was injured when a shelf fell on his right foot on September 22, 2017.

In an October 19, 2017 report, Christopher C. Szczesniak, a physician assistant, noted that appellant was seen in his clinic for evaluation of his right foot. He indicated that appellant injured his right foot at work when a heavy piece of machinery landed on it. Appellant related that he initially experienced no symptoms, but gradually developed swelling on the dorsum of his foot. He also reported that October 2, 2017 was the date of injury. Mr. Szczesniak conducted a physical examination and indicated an x-ray of the right foot revealed no evidence of obvious fractures or dislocations.

² In an October 27, 2017 return-to-work form (Form CA-3), the employing establishment advised OWCP that appellant had stopped work on October 2, 2017 and returned to full-time regular-duty work on October 26, 2017.

In an October 25, 2017 report, Mr. Szczesniak again noted October 2, 2017 as the date of injury and that appellant had not worked since. In a form report of even date, Dr. Samuel G. Dellenbaugh, a Board-certified orthopedic surgeon, indicated that appellant sustained a work-related injury on October 2, 2017 and diagnosed right ankle/foot pain and right foot effusion. He noted that appellant was totally disabled from work for the period October 19 through 25, 2017. Dr. Dellenbaugh found that appellant could return to work on October 26, 2017 without restrictions.

In an October 25, 2017 attending physician's report, Part B of Form CA-16, Dr. Dellenbaugh noted that appellant injured his right foot when a door fell on it at work. He again diagnosed right foot/ankle pain and right foot effusion.

In a development letter dated November 22, 2017, OWCP advised appellant of the deficiencies of his claim and instructed him as to the factual and medical evidence necessary to establish his claim. It attached a factual questionnaire seeking a full description of the events and circumstances surrounding the alleged September 22, 2017 employment incident. OWCP afforded him 30 days to provide the necessary information. No response was received.

In an October 2, 2017 medical report, Dr. Sazon noted that appellant reported that on September 22, 2017 he was pulling out a shelf at work when it fell on his right foot. He further reported that, although he felt fine after the September 22, 2017 incident, he experienced pain in the right foot while working on October 1, 2017. Dr. Sazon diagnosed foot pain.

In an October 9, 2017 medical report, Dr. Nita Parikh noted that appellant presented for an initial visit following a work-related injury. She indicated that he was injured, when a piece of heavy metal equipment fell on his right foot. Dr. Parikh diagnosed a foot injury and foot swelling.

By decision dated October 28 2020, 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 November 22, 2017 development questionnaire or provided information clarifying the alleged September 22, 2017 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ 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

³ *Supra* note 1.

⁴ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.⁵ 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.⁶

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 or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical 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, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁸ The employee has not met his or her burden of proof of establishing 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 serious doubt on an employee's statements in determining whether a case has been established. 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.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury in the performance of duty on September 22, 2017, as alleged.

Appellant has not established the factual component of his claim as he has insufficiently explained how and where the claimed injury occurred.¹¹ In a development letter dated November 22, 2017, OWCP provided a factual questionnaire for his completion and requested that he submit clarifying information describing how his claimed injury occurred. Appellant, however, did not complete and return the attached questionnaire and there is no statement in the record

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *See J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

⁹ *See V.J.*, Docket No. 19-1600 (issued March 13, 2020); *E.C.*, Docket No. 19-0943 (issued September 23, 2019).

¹⁰ *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹¹ *Supra* note 8.

describing the specific alleged employment-related incident.¹² As he has not responded to the request for factual information, the Board finds that the record lacks sufficient factual evidence to establish specific details of how the claimed injury occurred.¹³ Absent supporting evidence from appellant, as was requested in the development questionnaire, it cannot be determined that the incident occurred as alleged.¹⁴

Appellant provided a generalized and vague statement on his October 2, 2017 Form CA-1 alleging that he injured his right foot on September 22, 2017 when the door/shelf of the postcon fell on his foot. In medical reports dated October 2 and 9, 2017, he again noted his date of injury as September 22, 2017. In Dr. Cadigan's October 11, 2017 report, appellant recounted that he had been injured on October 1, 2017 when a piece of heavy equipment fell on his right foot. On October 19 and 25, 2017 he reported to Mr. Szczesniak that he was injured on October 2, 2017, when a piece of heavy machinery fell on his right foot. Similarly, in his October 25, 2017 report, Dr. Dellenbaugh noted that appellant sustained a work-related injury on October 2, 2017 when a door fell on his right foot. The Board finds that appellant's description of the incident in his Form CA-1 is inconsistent with his statements to his treating physicians. Appellant's varying descriptions of the date and circumstances of the claimed injury do not establish a singular account of the mechanism of injury.¹⁵ Further, the history of injury he related to his medical providers further detailed inconsistent descriptions of the mechanism of injury. By failing to respond to the development questionnaire and describe the specific employment incident and circumstances surrounding his alleged injury, and by failing to provide a consistent history of injury when seeking medical treatment, appellant has not established that the traumatic injury occurred in the performance of duty, as alleged.¹⁶ Thus, the Board finds that he has not met his burden of proof.¹⁷

As appellant has not met his burden of proof to establish that the September 22, 2017 incident occurred in the performance of duty, as alleged, it is unnecessary to address the medical evidence of record regarding causal relationship.¹⁸

¹² See *S.Z.*, Docket No. 19-1125 (issued October 22, 2020); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

¹³ *M.L.*, Docket No. 19-0909 (issued September 17, 2019); *M.S.*, Docket No. 18-0059 (issued June 12, 2019).

¹⁴ *H.O.*, Docket No. 17-1176 (issued November 27, 2018).

¹⁵ *M.W.*, Docket No. 20-1489 (issued March 29, 2021); *T.S.*, Docket No. 20-0027 (issued October 6, 2020).

¹⁶ *S.Z.*, *supra* note 12; *V.J.*, Docket No. 19-1600 (issued March 13, 2020); *H.D.*, Docket No. 15-1698 (issued May 4, 2016).

¹⁷ The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *S.P.*, Docket No. 19-1904 (issued September 2, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

¹⁸ *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).

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 September 22, 2017, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the October 28, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 30, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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