

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

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<b>S.D., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 21-0458</b>
	)	<b>Issued: September 14, 2021</b>
<b>DEPARTMENT OF THE NAVY, FLEET</b>	)	
<b>READINESS CENTER SOUTHWEST,</b>	)	
<b>San Diego, CA, Employer</b>	)	
	)	

*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 February 2, 2021 appellant filed a timely appeal from a January 6, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> The Board notes that, following the January 6, 2021 decision, OWCP received additional evidence. 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.*

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has established that he sustained an injury in the performance of duty.

## FACTUAL HISTORY

On October 8, 2020 appellant, then a 54-year-old machinist, filed an occupational disease claim (Form CA-2) alleging that factors of his federal employment, including repetitive lifting, bending, walking, stooping, climbing, and reaming caused left hand and shoulder conditions. He noted that he first became aware of his condition on April 15, 2015 and realized its relation to his federal employment on April 24, 2015.

Appellant submitted a report dated April 28, 2015 from John L. Frost, a physician assistant, who related that he diagnosed appellant with a lumbar spine sprain and thoracic spine pain. Mr. Frost also submitted a work status report, which provided appellant with work restrictions.

In a development letter dated October 19, 2020, OWCP advised appellant that additional evidence was necessary 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 the necessary evidence.

OWCP received a position description for machinist training leader.

In a report dated November 3, 2020, Dr. Jennifer G. Shih, Board-certified in family medicine, related that appellant's injury occurred on April 15, 2015. She diagnosed lumbar muscle strain. In a November 4, 2020 Form CA-20, Dr. Shih related that appellant was released to full work with no restrictions and no need for future medical care.

In an attending physician's report (Form CA-20) dated November 5, 2020, Mr. Frost related that appellant's injury occurred on April 15, 2015. He diagnosed thoracic spine pain.

By decision dated January 6, 2021, OWCP found that appellant had not established that the alleged factors of employment occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>3</sup> 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>4</sup> 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

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<sup>3</sup> *Id.*

<sup>4</sup> *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).

to the employment injury.<sup>5</sup> 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.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>7</sup>

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.<sup>8</sup> 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. 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.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty.

Appellant filed an occupational disease claim on October 8, 2020 alleging that factors of his federal employment, which required repetitive lifting, bending, walking, stooping, climbing, and reaming, caused his left hand and shoulder conditions. The Board finds that his description of the factors of his employment is imprecise and vague.<sup>10</sup> Appellant noted that he first became of his condition and that it was causally related to his employment on April 24, 2015, but on the

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<sup>5</sup> *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).

<sup>6</sup> *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).

<sup>7</sup> *See T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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

<sup>9</sup> *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

<sup>10</sup> *See J.B.*, Docket No. 19-1487 (issued January 14, 2020); *W.C.*, Docket No. 18-1651 (issued March 7, 2019); *see also C.M.*, Docket No. 17-0627 (issued June 28, 2017).

reverse side of the claim form, the employee's supervisor indicated that appellant first reported his medical condition on September 30, 2020 and that he did not stop work.

In its October 19, 2020 development letter, OWCP advised appellant of the factual information needed to establish his claim and provided a questionnaire for his completion regarding the circumstances surrounding the alleged traumatic injury. However, appellant did not complete and return the questionnaire in the allotted time period. By failing to respond to the questionnaire, he did not sufficiently explain circumstances surrounding his alleged medical condition.<sup>11</sup> Furthermore, the medical evidence of record does not discuss any employment factors.

The Board, therefore, finds that appellant has not established the factors of his federal employment alleged to have caused injury. Consequently, it is unnecessary to address the medical evidence of record.<sup>12</sup>

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 an injury in the performance of duty.

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<sup>11</sup> *R.B.*, Docket No. 19-1026 (issued January 14, 2020); *M.S.*, Docket No. 18-0059 (issued June 12, 2019); *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988 ); *Martha G. List*, 26 ECAB 200 (1974).

<sup>12</sup> *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); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997) (as appellant failed to establish that the claimed events occurred as alleged, it is unnecessary to discuss the probative value of medical evidence).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 6, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 14, 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