United States Department of Labor
Employees' Compensation Appeals Board

J.V., Appellant	)	
and	)	**Docket No. 21-0029**
	)	**Issued: April 15, 2022**
DEPARTMENT OF THE AIR FORCE, HILL AIR FORCE BASE, UT, Employer	)	

Appearances:
David Holdsworth, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On October 6, 2020 appellant filed a timely appeal from a May 4, 2020 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 an injury in the performance of duty on February 15, 2019, as alleged.

FACTUAL HISTORY

On July 2, 2019 appellant, then a 58-year-old aircraft mechanic, filed a traumatic injury claim (Form CA-1) alleging that, on February 15, 2019, he sustained spinal injuries when he slipped and fell while maneuvering a floor scrubber around a corner while in the performance of duty. On the reverse side of the claim form, appellant's supervisor, H.H., acknowledged that appellant was in the performance of duty when injured. Appellant did not stop work.

In a March 4, 2019 report, Dr. Kurt Bangerter, a Board-certified neurosurgeon, noted that appellant presented with chief complaints of bilateral hand numbness, weakness and incoordination, left leg weakness, and gait and balance problems, which he attributed to a slip and fall at work approximately three months prior. On physical examination, he found reduced strength, sensation and range of motion of the hands and feet, and noted that appellant was not able to heel walk, toe walk or tandem walk due to unsteadiness and spasticity. Dr. Bangerter reviewed January 29, 2019 magnetic resonance imaging (MRI) scans of the cervical and lumbar areas of the spine and diagnosed cervical disc disorder at C6-7 with myelopathy, spondylosis, stenosis, and acquired cervical spondylolisthesis. He noted an onset date of March 4, 2019, but that the signs and symptoms of cervical myelopathy had begun about three months prior following a slip and fall at work. Dr. Bangerter noted that appellant also had a mild left foot drop weakness; but most, if not all, of his symptoms were related to the cervical myelopathy. He recommended surgical intervention, including C6-7 anterior cervical discectomy, decompression and fusion (ACDF).

In a June 10, 2019 follow-up visit, Mark Bennett, a physician assistant, noted that appellant underwent an ACDF procedure on March 25, 2019 and recommended that he begin physical therapy and undergo an updated cervical MRI scan.

A June 19, 2019 MRI scan of the cervical spine revealed multi-level neural foraminal stenosis; surgical fusion at C6-7; and increased signal at T2 within the cord suggesting myelomalacia, which had increased since the preoperative study.

In a July 15, 2019 letter, Dr. Bangerter noted that appellant had suffered a fall while at work "around the first part of this year" and subsequently had developed signs and symptoms of cervical myelopathy. He opined that his diagnosis of cervical myelopathy was a direct result of the fall at work.

In a follow-up visit note of even date, Dr. Bangerter indicated that appellant reported ongoing numbness and paresthesia in the fourth and fifth digits of both hands. He performed a physical examination, reviewed the June 19, 2019 MRI results, and recommended continued physical therapy, but no further surgery.

In a July 24, 2019 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. In the same letter, it also informed the employing establishment that if he was treated at an agency medical facility for the alleged injury, it must provide treatment notes.

In a February 19, 2019 report, Dr. Eryn Stansfield, an occupational medicine specialist, noted that appellant had a history of weakness, multiple falls, and low back issues for the past 20 years. She further noted that, in the last two months, he had developed left foot drop and numbness and tingling in his hands at the fourth and fifth digits. Dr. Stansfield indicated that appellant believed he aggravated his cervical issues when he fell on hydraulic fluid at work. She performed a physical examination and recommended sedentary-duty restrictions.

In an August 22, 2019 response to OWCP's development questionnaire, appellant indicated that in December 2018, he fell at work, but did not report it because he was not experiencing any symptoms at that time. Subsequently, on February 15, 2019, he was operating a floor scrubber and slipped and fell while trying to maneuver it around a corner. Appellant noted that following the February 15, 2019 fall, he had difficulty standing and had to crawl to a chair to pull himself up to stand. He was very sore afterward, but was able to return to his tasks. Appellant indicated that, at that point, he realized he needed additional medical attention compared with the December 2018 incident.

By decision dated August 22, 2019, OWCP denied appellant's traumatic injury claim, finding that he had not submitted sufficient evidence to establish that the events occurred as alleged. Consequently, it found that he had not met the requirements to establish an injury as defined by FECA.

OWCP continued to receive medical evidence. MRI scans of the spine dated January 29, 2019 revealed Grade 1 anterolisthesis and degenerative changes resulting in severe spinal canal stenosis at C6-7, which was causing moderate cord deformity and acute cord edema; a moderate-to-severe T12 compression fracture; and Grade 2 anterolisthesis of L5 on S1 with associated severe bilateral foraminal stenosis.

In an emergency room note dated January 29, 2019, Dr. Amber Mounday, an emergency medicine specialist, noted appellant's chief complaints were weakness in the legs and difficulty lifting the left foot while walking, which had developed over the last two weeks. She further noted that he had a history of chronic back pain and a prior compression fracture at T12 due to a fall, which occurred five years prior. Dr. Mounday performed a physical examination, reviewed the MRI scans and diagnosed cervical and lumbar spinal stenosis.

In an undated witness statement, appellant's coworker, D.H., indicated that he witnessed appellant slip and fall on what appeared to be hydraulic fluid residue while operating a floor cleaning machine. He could not remember the date that this occurred, but did recall that appellant stated that it hurt and he also observed him walking with some difficulty.

In an October 25, 2019 letter, Dr. Bangerter recommended that appellant return to work in a desk job.

In a medical evaluation of work status form dated October 29, 2019, Dr. Stansfield noted a date of incident of February 15, 2019 and that the neck and back were affected.

In a work status form dated February 17, 2020, Dr. Bangerter noted the time frame for the injury as "the 1st part of the year of 2019." He indicated that appellant had experienced some improvement following the March 25, 2019 surgery and had returned to work performing clerical duties as of November 25, 2019.

On March 6, 2020 appellant, through counsel, requested reconsideration.

By decision dated May 4, 2020, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 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. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and 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]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[8] In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and

[3] *Id*.

[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).

[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] *S.W.*, Docket No. 17-0261 (issued May 24, 2017).

failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[9] 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.[10]

ANALYSIS

The Board finds that appellant has met his burden of proof to establish that a traumatic incident occurred in the performance of duty on February 15, 2019, as alleged.

In his July 2, 2019 Form CA-1, appellant indicated that on February 15, 2019, he fell on a slippery floor while maneuvering a scrubber around a corner, injuring his spine. In his August 22, 2019 narrative statement, he indicated that in December 2018 he fell at work but did not report it, and then fell again on February 15, 2019 while operating a floor scrubbing machine. Appellant's supervisor, H.H., acknowledged on the reverse side of the claim form that appellant was injured in the performance of duty on February 15, 2019. Although a witness to the fall, D.H., appellant's co-worker, could not recall the date on which the fall had occurred, he indicated that he witnessed appellant slip and fall on what appeared to be hydraulic fluid residue while operating a floor cleaning machine.

In a July 15, 2019 letter, Dr. Bangerter noted that appellant had suffered a fall while at work "around the first part of this year" and subsequently had developed signs and symptoms of cervical myelopathy, which he concluded was a direct result of the fall at work. In a work status form dated February 17, 2020, Dr. Bangerter noted the time frame for the injury as "the 1st part of the year of 2019."

Appellant has maintained that his injury occurred when he slipped and fell on February 15, 2019 while scrubbing the floor, which was also witnessed by his coworker D.H., acknowledged by his supervisor, as well as reported by his attending physician, Dr. Bangerter. Therefore, the Board finds that appellant has met his burden of proof to establish that a traumatic incident occurred in the performance of duty on February 15, 2019, as alleged.

As appellant has established that an incident occurred in the performance of duty on February 15, 2019, as alleged, the question becomes whether the incident caused an injury.[11] As OWCP found that he had not established fact of injury, it did not evaluate the medical evidence. The case must, therefore, be remanded for consideration of the medical evidence of record.[12] After such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing

[9] *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *Betty J. Smith*, 54 ECAB 174 (2002).

[10] *D.F., id.*; *see also M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

[11] *D.F., id.*; *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

[12] *Supra* note 9; *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

whether appellant has met his burden of proof to establish an injury causally related to the accepted February 15, 2019 employment incident, and any attendant disability.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that a traumatic incident occurred in the performance of duty on February 15, 2019, as alleged. The Board further finds that this case is not in posture for decision regarding whether she has established an injury causally related to the accepted January 19, 2021 employment incident.[13]

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2020 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part; the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 15, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[13] *K.P.* Docket No. 21-0828 (issued December 22, 2021).