



## ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on October 9, 2022, as alleged.

## FACTUAL HISTORY

On October 12, 2022 appellant, then a 47-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that on October 9, 2022 he injured his left thumb, left shoulder, right lower ribs, and right lower back when a patient he was attempting to help became combative and tried to enter his cruiser while in the performance of duty. On the reverse side of the claim form, R.C., appellant's supervisor, reported that he received notice of appellant's alleged injury on October 12, 2022 and acknowledged that he was injured in the performance of duty. Appellant stopped work on October 10, 2022.

In an October 20, 2022 development letter, 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 necessary evidence.

In a note dated October 10, 2022, Charity Pressey, a physician assistant, recounted that on October 9, 2022 appellant had to restrain a violent patient who was attempting to enter his police cruiser. In a separate note of even date, she reported that he had been assaulted and sustained right rib contusions, left shoulder strain, and contusion of the left thumb.

On October 13, 2022 Tamer Bahgat, a physician assistant, diagnosed an injury to the left thumb and found that appellant was totally disabled. In a separate note of even date, he reported that he had sustained a work-related injury apprehending a subject.

In a note dated November 16, 2022, Elvis Smith, a physician assistant, related that appellant had to restrain a belligerent person and injured his ribs on the right side and his wrist and hand. He noted that his symptoms had fully resolved.

By decision dated December 5, 2022, OWCP denied appellant's traumatic injury claim, finding that he had not established that the October 9, 2022 employment incident 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

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

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 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 determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a 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, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.<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 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 serious doubt on an employee's statements in determining whether a *prima facie* case has been established.<sup>9</sup> 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.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on October 9, 2022 as alleged.

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<sup>4</sup> *A.T.*, Docket No. 22-1103 (issued December 2, 2022); *K.H.*, Docket No. 22-0370 (issued July 21, 2022); *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).

<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> *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).

<sup>8</sup> *A.T.*, *K.H.*, *supra* note 4; *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667-71 (1987).

<sup>9</sup> *A.T.*, *K.H.*, *id.*; *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

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

As noted, an employee's statement alleging that an injury occurred at a given time, place, and in a given manner, is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>11</sup> Appellant alleged that he sustained injuries to his left thumb, left shoulder, right lower ribs, and lower back on October 9, 2022 when a combative patient attempted to enter his cruiser while he was in the performance of duty. He provided a detailed account of the incident in his October 12, 2022 Form CA-1. Appellant notified his supervisor of the injury on October 12, 2022 and provided treatment notes beginning October 10, 2022. The initial October 10, 2022 notes indicate that he was injured restraining a violent patient who was attempting to enter his police cruiser.

The injuries that appellant claimed, and the initial medical treatment are consistent with the facts and circumstances that he set forth and his course of action.

As appellant has established that the October 9, 2022 employment incident occurred as alleged, the question becomes whether the incident caused an injury.<sup>12</sup> As OWCP found that he had not established fact of injury, it has not evaluated the medical evidence. The Board will, therefore, set aside OWCP's December 5, 2022 decision and remand the case for consideration of the medical evidence of record.<sup>13</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met his burden of proof to establish an injury causally related to the accepted October 9, 2022 employment incident and any attendant disability.

### CONCLUSION

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on October 9, 2022 as alleged.

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<sup>11</sup> *C.B.*, Docket No. 21-0554 (issued June 21, 2022); *A.W.*, Docket No. 21-0686 (issued April 5, 2022); *N.A.*, Docket No. 21-0773 (issued December 28, 2021); *L.Y.*, Docket No. 21-0221 (issued June 30, 2021); *see M.C.* and *D.B.*, *id.*

<sup>12</sup> *C.B.*, *A.W.*, and *N.A.*, *id.*; *see M.H.*, Docket No. 20-0576 (issued August 6, 2020); *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

<sup>13</sup> *C.B.*, *A.W.*, and *N.A.*, *id.*; *M.H.*, *id.*, *S.M.*, Docket No. 16-0875 (issued December 12, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 5, 2022 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: August 10, 2023  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board