

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

E.L., Appellant	)	
	)	
and	)	Docket No. 24-0341
	)	Issued: May 10, 2024
DEPARTMENT OF THE NAVY, NAVAL	)	
INSTALLATIONS COMMAND, San Diego, CA,	)	
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  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On February 14, 2024 appellant filed a timely appeal from an October 24, 2023 merit decision and an October 5, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on July 5, 2022, as alleged; and (2) whether OWCP properly denied appellant's request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124(b).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On July 22, 2022 appellant, then a 44-year-old firefighter, filed a traumatic injury claim (Form CA-1) alleging that on July 5, 2022 he sustained a left knee injury while operating firefighting hose lines and fire department hand tools while combatting a fire. He did not stop work.

In visit notes dated July 6, 2022, Dr. John Reid West, an orthopedic surgeon, noted that appellant worked as a firefighter, and he could not identify any specific injury which caused his left knee pain. On physical examination of the left knee, he reported grossly limited range of motion (ROM) and pain, medial joint line tenderness, positive lateral McMurray's test, positive bounce test, and positive medial McMurray's test. A review of an x-ray of the left knee revealed acute complex medial meniscus tear and acute complex lateral meniscus tear.

In a July 27, 2022 note, Dr. West diagnosed left lateral meniscus tear. His examination findings remained unchanged. A review of a magnetic resonance imaging (MRI) scan demonstrated a large medial meniscal tear with large flap posterior and centrally, with mild effusion.

In a development letter dated July 28, 2022, OWCP informed appellant that the evidence of record was insufficient to establish his claim. Appellant was advised regarding the medical and factual evidence necessary to establish his claim. A questionnaire was provided for his completion. Appellant was afforded 30 days to submit the requested information.

Thereafter OWCP received a work capacity evaluation (Form OWCP-5c) dated July 6, 2020 from Dr. West finding that appellant was capable of performing his usual job duties without restriction. Dr. West also noted that he was ordering an MRI scan to evaluate appellant's left medial meniscus tear and moderate degenerative patellofemoral chondromalacia.

In an August 3, 2022 statement, T.M., supervisor, recounted that appellant informed him that he had injured his left knee while performing job tasks working a commercial structure fire. Appellant notified T.M. of the incident while they were still on the scene of the fire.

In a statement dated August 5, 2022, appellant related that while responding to a structure fire he felt a sharp left knee pain while performing his duties. He related that he was unable to pinpoint the exact moment of the injury, but that he notified his supervisor that morning of his injury.

Dr. West, in a note dated August 26, 2022, related that appellant had been engaged in fighting a fire and had no knee pain prior to the event. He diagnosed a meniscus tear which had been successfully treated with an arthroscopic meniscectomy.

By decision dated August 31, 2022, OWCP denied appellant's traumatic injury claim, finding that the submitted evidence did not establish that the July 5, 2022 incident occurred, as alleged. It noted that his description of the injury is vague and nonspecific. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP also received a September 30, 2022 statement from appellant wherein he noted that his movements during the fire included kneeling, squatting, turning, walking, pivoting, and lifting; carrying heavy items; pulling a firehose filled with water to put out the fire; and moving items within the structure. These activities were performed while appellant was wearing fire protective clothing weighing approximately 50 pounds.

On August 22, 2023 appellant requested reconsideration.

Appellant's September 30, 2022 request for an oral hearing before a representative of OWCP's Branch of Hearings and Review was postmarked on September 12, 2023. He asserted that he emailed his request for an oral hearing to his human resource specialist to be uploaded to Employees' Compensation Operations & Management Portal (ECOMP), but that the upload did not occur.

By decision dated October 5, 2023, OWCP denied appellant's request for a hearing finding his request was untimely.

By decision dated October 24, 2023, OWCP denied modification.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>2</sup> 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,<sup>3</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>4</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>5</sup>

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.<sup>6</sup> 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

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<sup>2</sup> *Id.*

<sup>3</sup> *D.M.*, Docket No.23-0180 (issued August 25,2023); *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).

<sup>4</sup> *D.M.*, *id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *D.M.*, *id.*; *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).

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

the employment incident at the time and place, and in the manner alleged.<sup>7</sup> Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>8</sup>

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. 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. 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 the employee's statements in determining whether a *prima facie* case has been established.<sup>9</sup> 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>10</sup>

### ANALYSIS -- ISSUE 1

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on July 5, 2022, as alleged.

As noted, an employee's statement alleging that an injury occurred at a given time, place, and in the manner alleged is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>11</sup> Appellant alleged in his July 22, 2022 Form CA-1 that on July 5, 2022 he sustained a left knee injury while performing tasks at work including operating firefighting hose lines and fire department hand tools while combatting a fire. OWCP also received a September 30, 2022 statement from appellant wherein he noted his movements during the fire included kneeling, squatting, turning, walking, pivoting, and lifting; carrying heavy items; pulling a firehose filled with water to put out the fire; and moving items within the structure.

On the reverse side of the Form CA-1, the employing establishment acknowledged that appellant was in the performance of duty when injured, and its knowledge of the facts about the injury were consistent with his statements. The record also contains an August 3, 2022 statement from T.M., supervisor, who related that on July 5, 2022 appellant informed him that he had injured his left knee while performing job tasks working a commercial structure fire, while they were still on the site of the fire.

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

<sup>8</sup> *T.V.*, Docket No. 22-0968 (issued October 23, 2023); *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>9</sup> *T.V.*, *id.*; *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

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

<sup>11</sup> *T.V.*, *id.*; *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *see also M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

Appellant sought medical care on July 6, 2022 with Dr. West, who noted that appellant worked as a firefighter, and diagnosed acute complex medial meniscus tear and acute complex lateral meniscus tear. In an August 26, 2022 report, Dr. West noted that appellant had been engaged in fighting a fire and subsequently developed left knee pain.

The injuries appellant claimed are consistent with the facts and circumstances he set forth, his subsequent course of action, and the medical evidence he submitted. The Board thus finds that he has met his burden of proof to establish the employment incident occurred in the performance of duty on July 5, 2022, as alleged.<sup>12</sup>

As appellant has established that, an incident occurred in the performance of duty on July 5, 2022 as alleged, the question becomes whether the incident caused an injury.<sup>13</sup> 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.<sup>14</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 January 8, 2022 employment incident.<sup>15</sup>

### 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 July 5, 2022 as alleged. The Board further finds that the case is not in posture for decision regarding whether he has established an injury causally related to the accepted July 5, 2022 employment incident.

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<sup>12</sup> *Supra* note 9.

<sup>13</sup> *D.F.*, *supra* note 11; *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

<sup>14</sup> *D.F.*, *id.*; *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>15</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 24, 2023 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 10, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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