

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

B.G., Appellant)	
)	
and)	Docket No. 24-0869
)	Issued: November 7, 2024
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS & BORDER PROTECTION,)	
Casa Grande, AZ, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 27, 2024 appellant filed a timely appeal from a February 29, 2024 merit decision and an August 21, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, it was asserted that oral argument should be granted because appellant's doctor provided a letter explaining why he was given 45 days off after he was hospitalized for rhabdomyolysis. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the August 21, 2024 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.*

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish that a traumatic injury occurred in the performance of duty on October 28, 2023 as alleged; and (2) whether OWCP properly determined that appellant abandoned his request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

FACTUAL HISTORY

On November 16, 2023 appellant, then a 24-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on October 28, 2023 he sustained an injury to his kidneys after becoming dehydrated while in the performance of duty. On the reverse side of the claim form, the employing establishment acknowledged that appellant was injured in the performance of duty. M.B., an employing establishment supervisor, explained that appellant was participating in intense physical training and, due to his physical exertion, was hospitalized on November 4 through 6, 2023 with rhabdomyolysis. He stopped work on November 7, 2023.

Thereafter, OWCP received additional evidence, including an attending physician's report, Part B of the Form CA-16, dated November 7, 2023, from an unidentifiable medical provider non-traumatic rhabdomyolysis and November 7 and 14, 2023 reports from a certified family nurse practitioner.

In the November 5, 2023 hospital report, Dr. Manuel Aranda, Jr., an emergency medicine physician, reported that appellant was seen for evaluation of right flank pain and decreased urine output. He noted that over the past two weeks appellant had been participating in intense physical training at the Border Patrol Academy. Dr. Aranda noted that, during the week prior, appellant had developed right flank pain and dark urine and had received intravenous (IV) fluids throughout the week by medics within the Border Patrol facility, with improvement of pain and urine color. He explained that the day before, appellant went on a 24-mile hike/training exercise and again developed right flank pain. Appellant was hospitalized on November 5, 2023 for rhabdomyolysis, acute right flank pain, and acute dehydration. He was discharged on November 6, 2023.

In a November 7, 2023 report, Dr. Farooque Ahmed, an internist, completed an authorization for examination/and or treatment (Form CA-16) and diagnosed resolved non-traumatic rhabdomyolysis. He checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by the employment activity of severe physical activity. Dr. Ahmed also noted that the injury required hospitalization from November 5 through 6, 2023. He opined that appellant could resume regular work on December 19, 2023. In a December 19, 2023 prescription note and an undated note, Dr. Ahmed reiterated that appellant could return to work without restrictions on December 19, 2023.

In a development letter dated December 29, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP also requested that appellant submit a narrative medical report from his physician which contained a detailed description of findings and diagnoses, explaining how the reported work activities caused, contributed to, or aggravated his medical condition. It afforded him 60 days to respond. No response was received within the time allotted.

In a follow-up letter dated January 22, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim as no additional information was received in response to its letter. It noted that he had 60 days from the December 29, 2023 letter to submit the necessary evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

On January 26, 2024 OWCP received a report dated November 5, 2023 from Dr. Aranda which contained a final impression of rhabdomyolysis. Dr. Aranda reported the history of injury as appellant was in a 21-day intense training for border patrol and started experiencing flank pain, decreased urine output and brown urine. He noted examination findings and appellant's treatment prior to hospitalization.

By decision dated February 29, 2024, OWCP denied appellant's claim, finding that he had not established that the October 28, 2023 employment incident occurred as alleged. It noted that he had not responded to the development questionnaire. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 21, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the February 29, 2024 decision. In support thereof, he submitted a March 27, 2024 attending physician's report (Form CA-20) from Dr. Ahmed reiterating diagnoses of rhabdomyolysis and right flank pain caused by a work-related injury.

In a July 8, 2024 notice, OWCP's hearing representative informed appellant that his oral hearing would be conducted by telephone, and was scheduled for August 9, 2024 at 2:30 p.m. Eastern Standard Time (EST). The hearing representative provided the toll-free number and passcode for access to the hearing and mailed the notice to appellant's last known address of record, as well as to the employing establishment. Appellant did not appear for the hearing, and no request for postponement was made.

By decision dated August 21, 2024, OWCP found that appellant had abandoned his request for an oral hearing as he had received written notification of the hearing 30 days in advance, but failed to appear. It further noted that there was no indication in the record that he had contacted the Branch of Hearings and Review either prior to, or subsequent to, the scheduled hearing to explain his failure to appear.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ 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,⁵ 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

⁴ *Supra* note 2.

⁵ *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).

employment injury.⁶ 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.⁷

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.⁸ Generally, 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 the employment incident at the time and place, and in the manner alleged.⁹ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.¹⁰

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.¹¹ 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.¹²

ANALYSIS -- ISSUE 1

The Board finds that appellant has met his burden of proof to establish that the October 28, 2023 employment incident occurred in the performance of duty, as alleged.

As noted, an employee's statement alleging that an injury occurred at a given time and place, and in a given manner, is of great probative value, and will stand unless refuted by strong or persuasive evidence.¹³ Appellant alleged that he sustained an injury to his kidneys when he became dehydrated while in the performance of duty. On the reverse side of the claim form, the employing establishment acknowledged that he was injured in the performance of duty. Additionally, M.B. explained the circumstances surrounding the injury noting that appellant was participating in intense physical training and due to physical exertion, was hospitalized on

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *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).

⁸ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁹ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

¹² *B.M.*, Docket No. 21-1185 (issued March 4, 2022); *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

¹³ *Id.*

November 4 through 6, 2023 with rhabdomyolysis. Appellant also provided a consistent description of the October 28, 2023 employment incident to his treating physicians. Dr. Aranda, the emergency room physician, diagnosed rhabdomyolysis. He noted, in the November 5, 2023 hospital report, that appellant had been participating in intense physical training over the past two weeks at the Border Patrol Academy. Dr. Aranda further noted that during the week prior, appellant had developed right flank pain and dark urine, which required treatment with IV fluids at the Border Patrol facility. He also reported that the day prior to appellant's presentation, he went on a 24-mile hike/training exercise and again developed right flank pain. In his final report dated November 5, 2023, Dr. Aranda reported that appellant was in a 21-day intense training for border patrol, and started experiencing flank pain, decreased urine output and brown urine. On November 7, 2023 he completed a Form CA-16 and diagnosed resolved nontraumatic rhabdomyolysis. Dr. Aranda checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by the employment activity of severe physical activity. The Board therefore finds that the October 28, 2023 employment incident occurred in the performance of duty, as alleged.

As appellant has established that the October 28, 2023 employment incident occurred in the performance of duty as alleged, the question becomes whether the incident caused an injury.¹⁴ As OWCP found that appellant had not established fact of injury, it has not evaluated the medical evidence. The Board shall, therefore, set aside OWCP's February 29, 2024 decision, and remand the case for consideration of the medical evidence of record.¹⁵ 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 28, 2023 employment incident.¹⁶

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that a traumatic injury occurred in the performance of duty on October 28, 2023, as alleged.¹⁷

¹⁴ *S.C.*, Docket No. 22-0294 (issued October 24, 2022).

¹⁵ *S.C.*, *id.*; *A.W.*, Docket No. 21-0686 (issued April 5, 2022); *N.A.*, Docket No. 21-0773 (issued December 28, 2021); *see M.H.*, Docket No. 20-0576 (issued August 6, 2020); *S.M.*, Docket No. 16-0875 (issued December 12, 2017).

¹⁶ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

¹⁷ The Board notes that the employing establishment issued a Form CA-16, dated November 7, 2023. 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); *B.W.*, Docket No. 22-0134 (issued May 24, 2022); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the February 29 and August 21, 2024 decisions of the Office of Workers' Compensation Programs is reversed, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 7, 2024
Washington, DC

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

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

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