United States Department of Labor
Employees' Compensation Appeals Board

PETER J. DAMOS, Appellant	)	
	)	**Docket No. 04-1698**
and	)	**Issued: December 6, 2004**
DEPARTMENT OF HOMELAND SECURITY, U.S. SECRET SERVICE, San Antonio, TX, Employer	)	

Appearances:
Peter J. Damos, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On June 23, 2004 appellant filed a timely appeal of a February 25, 2004 decision of the Office of Workers' Compensation Programs, finding that appellant had not established an injury in the performance of duty on January 12, 2004. Pursuant to 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty on January 12, 2004.

FACTUAL HISTORY

On January 20, 2004 appellant, a 51-year-old assistant to the special agent in charge, filed a traumatic injury claim for continuation of pay/compensation (Form CA-1) alleging that he sustained an injury on January 12, 2004. Appellant indicated on the claim form that he was involved in a motor vehicle accident and "was twisted by the impact of the collision and struck

by exploding airbags, hitting my head and straining my back, neck and shoulders." The location of the accident was reported as "12700 NW Military" and the time as 07:30.

By letter dated January 22, 2004, the Office requested additional evidence regarding the claim. Appellant submitted a letter dated January 30, 2004 stating that the accident occurred on January 12, 2004 in San Antonio, Texas; he also noted that he had prior claims for work-related automobile accidents, including a March 19, 2003 injury.

The medical evidence of record includes reports dated March 21, April 21 and 27, 2003 from Dr. Kolar N. Murthy, a neurologist. The March 21, 2003 report notes that appellant was involved in a car accident two days earlier. The record also contains diagnostic studies from April 2003 of the cervical spine.

By decision dated February 25, 2004, the Office denied the claim for compensation. The Office found that appellant did not submit sufficient evidence to establish an incident as alleged, or medical evidence providing a diagnosed condition connected to the claimed incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that he or she sustained an injury while in the performance of duty.[2] In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[3]

ANALYSIS

Appellant's burden of proof includes the submission of sufficient evidence as to the claimed incident for the Office to make a decision as to whether the incident occurred as alleged.[4] In this case, appellant alleged that he was involved in a motor vehicle accident on January 12, 2004 in San Antonio that occurred while he was in the performance of duty. Appellant did not, however, submit a detailed statement regarding the incident or any other

[1] 5 U.S.C. §§ 8101-8193.

[2] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

[3] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[4] *See, e.g., Gary L. Fowler*, 45 ECAB 365 (1994), where the claimant submitted a detailed statement regarding the occurrence of a motor vehicle accident, as well as other supporting evidence such as a police report and contemporaneous medical evidence.

evidence regarding the alleged accident. The record does not contain sufficient evidence to establish an employment incident on January 12, 2004 as alleged.[5]

The Board also notes that appellant's burden of proof would not be satisfied by establishing an employment incident as alleged. Appellant must also submit probative medical evidence on causal relationship between a diagnosed condition and the employment incident. Dr. Murthy's notes of March 21, April 21 and 27, 2003 do not contain a reasoned opinion of causality between the accident alleged and the condition claimed. The Board has held that medical evidence must be in the form of a reasoned opinion by a qualified physician based on a complete and accurate factual and medical history.[6] The record submitted to the Board contained evidence from 1993 that did not address the relevant medical issues presented.

CONCLUSION

The Board finds that appellant did not meet his burden of proof as he did not submit sufficient factual or medical evidence to establish an injury in the performance of duty on January 12, 2004.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 25, 2004 is affirmed.

Issued: December 6, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[5] The Board's regulations provide that review of a case is limited to evidence in the case record that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). On this appeal the Board reviewed only evidence that was before the Office at the time of the February 25, 2004 decision.

[6] *Robert J. Krstyen*, 44 ECAB 227, 229 (1992).