United States Department of Labor
Employees' Compensation Appeals Board

K.C., Appellant	)	
and	)	**Docket No. 09-745**
	)	**Issued: October 7, 2009**
DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT-EMERGENCY FIRE FIGHTERS, Reno, NV, 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
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On January 22, 2009 appellant filed a timely appeal from an October 14, 2008 merit decision of the Office of Workers' Compensation Programs denying his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant satisfied his burden of proof to establish that he sustained an injury in the performance of duty on July 7, 2008.

FACTUAL HISTORY

On September 2, 2008 appellant, a 28-year-old senior fire fighter range technician, filed a traumatic injury claim (Form CA-1) for "general exposure" to and a "potential for infection" by the Hepatitis C virus. He alleged that on July 7, 2008 he was exposed to medical equipment used on a patient who was infected with the Hepatitis C virus. Appellant's claim form contained a

witness statement, dated July 14, 2008, signed by Blake Vernon who stated that appellant "may have been accidentally exposed to contaminated material during clean up of medical equipment."

In support of his claim, appellant submitted a report (Form CA-16), dated August 2008 and signed by Dr. James Quirk, who reported treating appellant for a possible Hepatitis C infection.[1] Dr. Quirk noted that "labs [were] drawn for possible exposure to Hep[atitis] C." By checkmark, he opined that appellant's condition was caused by his employment.

Appellant submitted an exposure incident record for bloodborne pathogen exposure, dated August 7, 2008 signed by Dr. Quirk.

By decision dated October 14, 2008, the Office denied appellant's claim because the evidence he submitted was insufficient to establish that he sustained an injury as defined by the Federal Employees' Compensation Act. It accepted that the incident of July 7, 2008 occurred as alleged but found the evidence insufficient because it lacked medical evidence containing a diagnosed condition.

LEGAL PRECEDENT

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, 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.[2] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[3]

The Office's regulations pertaining to workplace hazard exposure explain that simple exposure to workplace hazard, such as an infectious agent, does not constitute a work-related injury entitling an employee to medical treatment under the Act.[4] The regulations note that employers may be required under other statues or regulations to provide their employees with medical testing and/or other services in situations where workplace exposure has been alleged.[5]

[1] The Board notes that the Office issued a Form CA-16. A properly executed Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. *See Elaine M. Kreymborg*, 41 ECAB 256, 259 (1989). The CA-16 form appellant submitted was incomplete, as it consisted of only the second page and did not authorize either examination or treatment and was therefore not properly executed.

[2] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[3] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[4] 20 C.F.R. § 10.303(a).

[5] *Id*. at § 10.303(b).

ANALYSIS

On appeal, appellant reported that he "handled some equipment used on [a] patient's mouth, but was not labeled as such thus possibly exposing [himself] to Hepatitus C." The Board finds that appellant has not satisfied his burden of proof to establish that he sustained an injury in the performance of duty on July 7, 2008.

When a claim for compensation is based on a traumatic injury, the employee must establish the fact of injury by proof of an accident or fortuitous event having relative definiteness with respect to time, place and circumstance and having occurred in the performance of duty, and by proof that such accident or fortuitous event caused an "injury" as defined in the Act and its regulations.[6] The question of whether an employment incident causes an injury generally can be established only by medical evidence. Office procedures contain specific provisions pertaining to high risk employment. Chapter 2.805.8.a(1) of the Office's procedures provides that the Office should accept such case for the physical injury involved and authorize prophylactic treatment when the source of the infection is a known or probable carrier of the disease.[7]

The record reflects that the incident of July 7, 2008 occurred as alleged. However, the evidence of record does not establish that a physical injury actually occurred.

The medical evidence of record consisted of reports signed by Dr. Quirk. Neither report contained a firm diagnosis nor an explanation of how the accepted July 7, 2008 employment incident caused or aggravated any diagnosed condition. While Dr. Quirk reported that "labs [were] drawn for possible exposure to Hep[atitis] C," this is not a diagnosis.

In response to the question of whether appellant's condition was related to his employment, Dr. Quirk checked the box "yes." An opinion consisting of merely checking a box on a form report, without further explanation or rationale, is of little probative value.[8] These reports did not contain a firm diagnosis of any condition and therefore did not establish a physical injury. As such, they are of little probative value and are insufficient to satisfy appellant's burden of proof.

Appellant submitted a witness statement from Blake Vernon who reported that appellant "may have been accidentally exposed to contaminated material during cleanup of medical equipment." But exposure alone is not sufficient to satisfy appellant's burden in traumatic injury cases.

An award of compensation may not be based on surmise, conjecture or speculation.[9] As there was no other probative medical evidence demonstrating that the accepted employment

[6] *See Loretta Phillips*, 33 ECAB 1168, 1170 (1982); *Virgil M. Hilton*, 32 ECAB 447, 452 (1980); *Max Haber*, 19 ECAB 243, 247 (1967).

[7] *N.S.*, Docket No. 07-1652 (issued March 18, 2008).

[8] *See Alberta S. Williamson*, 47 ECAB 569 (1996).

[9] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007)*; Ruth R. Price*, 16 ECAB 688, 691 (1965).

incident caused or aggravated a medically diagnosed condition, appellant has not met his burden of proof.

CONCLUSION

The Board finds that appellant has not satisfied his burden of proof to establish that he sustained an injury in the performance of duty on July 7, 2008.

ORDER

IT IS HEREBY ORDERED THAT the October 14, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 7, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board