

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MAX R. GALLEGOS and DEPARTMENT OF THE AIR FORCE,  
HICKAM AIR FORCE BASE, HI

*Docket No. 03-1998; Submitted on the Record;  
Issued November 10, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issue is whether appellant has established that he sustained an injury in the performance of duty.

On March 4, 1963 appellant, then an aircraft mechanic,<sup>1</sup> filed a notice of injury or occupational disease claim alleging that on that date he experienced severe pain in his lower spine while attempting to lift himself out of a compartment in a C-124 aircraft.<sup>2</sup>

By letter dated April 25, 2003, the Office of Workers' Compensation Programs advised appellant about the type of evidence needed to establish his claim. Appellant responded that he was unable to obtain his medical records.

By decision dated June 3, 2003, the Office found the evidence of record sufficient to establish that the claimed event occurred. The Office, however, found no medical evidence of record establishing a condition connected to the event.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty.

A person who claims benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of his claim, including that he sustained an injury while in the performance of duty and that he had disability as a result.<sup>4</sup> In accordance with the Federal (FECA) Procedure Manual, to determine whether an employee actually sustained an

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<sup>1</sup> The Board notes that the record does not contain appellant's age at the time he filed his claim on March 4, 1963.

<sup>2</sup> The record reveals that appellant is no longer employed at the employing establishment.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Charles E. Evans*, 48 ECAB 692 (1997); *see* 20 C.F.R. § 10.110(a).

injury in the performance of his duty, the Office begins with the analysis of whether “fact of injury” has been established. Generally, “fact of injury” consists of two components, which must be considered, in conjunction with the other.

The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>5</sup> In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged. In this case, the Office accepted that appellant experienced the claimed accident as alleged. The Board finds that the evidence of record supports this incident.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>6</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.<sup>7</sup> The belief of the claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.<sup>8</sup>

Appellant did not submit any medical evidence in support of his claim. Although the Office advised appellant of the type of medical evidence needed to establish his claim, appellant failed to submit medical evidence responsive to the request. Consequently, appellant has not established that his back condition was caused by the March 4, 1963 employment incident.

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<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (“injury” defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) (“traumatic injury” and “occupational disease” defined).

<sup>7</sup> *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>8</sup> *Charles E. Evans*, *supra* note 4.

The June 3, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
November 10, 2003

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member