U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARLOS GALLEGOS and U.S. POSTAL SERVICE,
POST OFFICE, Depere, WI

Docket No. 98-2135; Submitted on the Record;
Issued January 13, 2000

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained a medical condition in the course of his federal employment.

On November 18, 1996 appellant, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he chipped a tooth that date while pulling a sack out of a BMC buckle. The Form CA-1 indicates that appellant first sought medical care on November 19, 1996. Appellant does not appear to have lost any time from work.

By letter dated February 26, 1998, the Office of Workers' Compensation Programs notified appellant that additional information was necessary to establish that he sustained an injury in the performance of duty, and requested that appellant describe in detail how the injury occurred and to submit a copy of his dental x-rays and a statement from his dentist regarding the causal relationship between the cited work factors and the diagnosed conditions. The Office advised appellant that such information was crucial to his claim and allowed appellant 30 days to respond.

On March 26, 1998 the Office received a copy of appellant's x-rays from his dentist.

In a decision dated April 7, 1998, the Office denied appellant's claim for compensation on the grounds that the evidence of file failed to establish that an injury was sustained as alleged. In the decision, the Office stated that appellant had been advised to submit medical evidence to establish that a condition resulted from the November 18, 1996 employment incident, but his dentist had not provided any evidence regarding his November 19, 1996 examination. Furthermore, the Office advised appellant that if he submitted a report from his dentist that the report must explain why the bridge was replaced more than 18 months after the injury and explain the causal connection between the injury and problems with his teeth.

The Board finds that appellant has failed to demonstrate that he sustained a chipped tooth in the performance of duty as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim[2] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[3] that the claim was timely filed within the applicable time limitation period of the Act,[4] that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition, for which compensation is claimed are causally related to the employment injury.[5] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. 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.[7] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[8] An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition, for which compensation is claimed are causally related to the injury.[9]

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions. The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[10]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *See Daniel R. Hickman*, 34 ECAB 1220 (1983); *see also* 20 C.F.R. § 10.110.

[3] *See James A. Lynch*, 32 ECAB 216 (1980); *see also* 5 U.S.C. § 8101(1).

[4] 5 U.S.C. § 8122.

[5] *See Melinda C. Epperly*, 45 ECAB 196 (1993).

[6] *See Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

[8] *Id.* For a definition of the term "injury," see 20 C.F.R § 10.5(a)(14).

[9] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; *see Frazier V. Nichol*, 37 ECAB 528 (1986).

[10] *See Elaine Pendleton*, 40 ECAB 1143 (1989).

In the instant case, the Office accepts that the incident occurred on November 18, 1996. However, the record contains no medical evidence in support of his claim that he sustained an employment-related chipped tooth, which resulted in damage to either his tooth or bridge on November 18, 1996. While an x-ray of appellant's tooth was submitted, it was not accompanied by any medical report from appellant's dentist providing a diagnosis relevant to the x-ray or opinion relating any findings to the accepted employment incident. Thus, appellant has not met his burden of proof and the Office properly denied his claim.[11]

The decision of the Office of Workers' Compensation Programs dated April 7, 1998 is affirmed.

Dated, Washington, D.C.
January 13, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[11] Appellant submitted new evidence on appeal. The Board, however, may only consider evidence that was in the case record that was before the Office at the time the Office rendered its decision; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from seeking to have the Office consider such evidence pursuant to a reconsideration request filed with the Office.