

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERMAINE COOLEY and DEPARTMENT OF JUSTICE,
FEDERAL PRISON SYSTEMS, Seagoville, TX

*Docket No. 03-481; Submitted on the Record;
Issued April 28, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof in establishing that his swollen elbow was caused by federal employment factors.

On July 5, 2002 appellant, then a 29-year-old correctional officer, filed a notice of traumatic injury alleging that on July 5, 2002 his right elbow was swollen due to a "possible spider bite." Appellant was admitted to the hospital and underwent surgery to his right elbow on July 16, 2002. He submitted a clinical note dated August 21, 2002 from Dr. Joseph M. Tejan, a Board-certified orthopedic surgeon, indicating that his elbow wound had healed and he would be seen for a follow-up appointment in two weeks. A worksheet dated August 1, 2002 from Nurse Renee Graham indicated a diagnosis of "cellulitis right elbow."

By letter dated September 12, 2002, the Office of Workers' Compensation Programs requested detailed factual and medical evidence from appellant, stating that the information submitted was insufficient to establish a work-related injury on July 5, 2002. Appellant did not submit any evidence.

By decision dated October 23, 2002, the Office denied appellant's claim for compensation on the grounds that he did not establish fact of injury.¹

The Board finds that appellant did not meet his burden of proof to establish that his swollen elbow was caused by factors of his federal employment.

¹ Appellant submitted additional evidence to the Office after October 23, 2002 and to the Board on appeal, but the Board's review of a case is limited to the evidence in the case record, which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶ 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.⁷

Traumatic injury is defined by regulation as "a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member of the body affected."⁸

In the instant case, appellant has not identified a traumatic injury occurring in a specific time, place and manner. He only indicated on his Form CA-1 that an alleged injury occurred on July 5, 2002 "while working correctional post on compound" and that the injury was due to a "possible" spider bite. Appellant did not explain the work duties he was performing at the time of the alleged injury or how this resulted in the swollen elbow. The record indicates that appellant did not know what caused his swollen elbow and he stated that the injury was caused by a "possible" spider bite. Appellant did not establish that a spider bit him and, as a consequence, his elbow began to swell. Appellant also apparently reported to a field nurse that he was "unsure" what happened to his right elbow. Appellant was unable to identify a time and place of occurrence of his injury.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

⁷ 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. *Frazier V. Nichol*, 37 ECAB 528 (1986).

⁸ 20 C.F.R. § 10.5(ee).

The Office informed appellant that the factual and medical evidence was insufficient to establish that he sustained an injury in the performance of duty and asked appellant to respond to specific questions regarding the alleged injury on July 5, 2002. Although given an opportunity to do so, appellant failed to clarify how the alleged injury occurred.

Consequently, the Board finds that appellant has not established that an injury occurred on July 5, 2002 as alleged. As appellant did not meet the first requirement in establishing “fact of injury,” it is unnecessary to address the medical evidence in this case.

The October 23, 2002 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 28, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member