

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILBUR W. HICKS and DEPARTMENT OF THE ARMY,  
ARMY RESERVES, Cadiz, OH

*Docket No. 03-742; Submitted on the Record;  
Issued April 28, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
A. PETER KANJORSKI

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

On September 17, 2002 appellant, then a 57-year-old mechanic, filed a traumatic injury claim alleging that on that date he cut his scalp when he bumped his head while getting up from under a trailer. Appellant did not submit any medical or factual evidence in support of his claim.

By letter dated October 8, 2002, the Office of Workers' Compensation Programs advised appellant to submit an opinion from a physician explaining how his injury resulted in a diagnosed condition. Appellant did not respond.

In a November 26, 2002 decision, the Office found the evidence of record sufficient to establish that appellant actually experienced the claimed accident, but insufficient to establish that a condition had been diagnosed in connection with this accident. Accordingly, the Office denied appellant's claim for compensation.<sup>1</sup>

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

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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

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<sup>1</sup> On appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision; *see Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

was filed within applicable time limitation; that an injury was sustained while 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.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.<sup>4</sup>

To determine whether an employee has sustained a traumatic injury in the performance of duty “fact of injury” must first be established.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> An employee may establish that an injury occurred in the performance of duty but fail to establish that his or her disability or resulting condition was causally related to the injury.<sup>8</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant’s condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by his employment is sufficient to establish a causal relationship.<sup>9</sup> Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>10</sup> A physician’s opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.<sup>11</sup> Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and claimant’s specific employment factors.<sup>12</sup>

In the present case, it is not disputed that appellant bumped his head while getting up from under a trailer as the Office accepted that this incident actually occurred. However, appellant did not submit any medical evidence in support of his claim for compensation based on

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<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 3.

<sup>5</sup> *Neal C. Evins*, 48 ECAB 252 (1996).

<sup>6</sup> *Michael W. Hicks*, 50 ECAB 325, 328 (1999).

<sup>7</sup> 5 U.S.C. § 8101(5); 20 C.F.R. § 10.5(ee) (1999) (defining injury).

<sup>8</sup> *Earl David Seal*, 49 ECAB 152, 153 (1997); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

<sup>9</sup> *Robert G. Morris*, 48 ECAB 238, 239 (1996).

<sup>10</sup> *Id.*

<sup>11</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>12</sup> *Id.*

the accepted employment incident. The Office advised appellant of the type of evidence required to establish his claim; however, he failed to submit such evidence. Appellant failed to submit a rationalized medical opinion relating a diagnosed condition to the accepted employment incident.<sup>13</sup>

Accordingly, as appellant failed to submit any probative, rationalized medical evidence in support of a causal relationship between his claimed condition and the September 17, 2002 employment incident, the Office properly denied his claim for compensation.

The November 26, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
April 28, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>13</sup> *William C. Thomas*, 45 ECAB 591 (1994).