

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PAUL A. HORGER and DEPARTMENT OF THE NAVY,  
CIVILIAN PERSONNEL OFFICE, Croydon, PA

*Docket No. 03-250; Submitted on the Record;  
Issued August 4, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant sustained an injury in the performance of duty on July 22, 2002.

On July 23, 2002 appellant, then a 21-year-old laborer, filed a notice of traumatic injury, alleging that on July 22, 2002 he contracted poison ivy on his face, neck, arms and legs while in the performance of duty. He explained that he was removing poison ivy from a fence and that his sweat carried the poison ivy through his protective clothing. Appellant did not submit any medical evidence with his claim.

By letter dated August 29, 2002, the Office of Workers' Compensation Programs informed appellant that additional evidence was necessary to process his claim. Appellant was allowed 30 days to submit medical evidence. Appellant did not submit any additional evidence.

By decision dated October 1, 2002, the Office denied appellant's claim because the evidence of record was insufficient to establish that he sustained an injury as alleged.

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on July 22, 2002.

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether "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.<sup>1</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>2</sup>

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<sup>1</sup> Gary J. Watling, 52 ECAB 278, 279-80 (2001).

<sup>2</sup> *Id.*

In this case, appellant satisfied the first criteria. The Office found that the record supported that appellant actually experienced the claimed incident on July 22, 2002. However, the Office determined that the evidence did not establish that a condition had been diagnosed in connection with the July 22, 2002 employment incident. The record does not include any medical evidence. Despite having been advised by the Office that medical evidence was needed to establish his claim, appellant failed to submit any medical evidence prior to the issuance of the October 1, 2002 decision.<sup>3</sup> Therefore, appellant has failed to establish that he sustained a personal injury as a result of his July 22, 2002 employment exposure.

The October 1, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
August 4, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>3</sup> With his appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal. 20 C.F.R. § 501.2(c).