

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of REYNALDO ALVARA and DEPARTMENT OF JUSTICE,  
IMMIGRATION & NATURALIZATION SERVICE, El Paso, TX

*Docket No. 02-1574; Submitted on the Record;  
Issued March 19, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty on February 13, 2002.

On February 13, 2002 appellant, then a 36-year-old immigration inspector, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1). He provided a witness statement from Eduardo Gonzalez who indicated that on that date<sup>1</sup> appellant was escorting a male subject to the employing establishment secondary when the subject began to swing and attempted to abscond from appellant. He became involved in an altercation with the male subject and received an abrasion to the right side of his neck, along with a cut and abrasion on his left elbow. Appellant also complained of pain in the right knee and back. Appellant did not stop work.<sup>2</sup>

In letters dated March 4 and 5, 2002, the Office of Workers' Compensation Programs advised appellant of the additional factual and medical evidence needed to establish his claim and requested that he submit such. Appellant was advised that submitting a rationalized statement from his physician addressing any causal relationship between his claimed injury and factors of his federal employment was crucial. Appellant was allotted 30 days to submit the requested evidence.

By decision dated April 11, 2002, the Office denied appellant's claim for the reason that "fact of an injury was not established," as it was not established that the claimed incident occurred on February 13, 2002 in the manner alleged.

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<sup>1</sup> The claim was originally filed with a date of February 13, 2001; however, it was amended as this was a typographical error.

<sup>2</sup> As per the claim form.

The Board finds that appellant has established that he received an abrasion to the right side of his neck, along with a cut and abrasion on his left elbow.

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation 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 is 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 upon a traumatic injury or occupational disease.<sup>4</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.<sup>5</sup>

In the instant case, the Office denied appellant's claim on the grounds that "fact of an injury was not established," as it was not established that the claimed incident occurred on February 13, 2002 in the manner alleged. However, in the instant case, there is no dispute that appellant was an "employee" within the meaning of the Act, nor that appellant timely filed his claim for compensation. Further, the witness statement on the Form CA-1, confirms that appellant was injured in the performance of duty. Finally, the employing establishment did not contest that the February 13, 2002 incident occurred at the time, place and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>6</sup>

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<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>5</sup> *Elaine Pendleton*, *supra* note 3.

<sup>6</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

Although causal relationship generally requires a rationalized medical opinion, the Board has held that the Office may accept a case without a medical report when one or more of the following criteria, as set forth in the Office's procedure manual, are satisfied:<sup>7</sup>

“(1) The condition reported is a minor one which can be identified on visual inspection by a lay person (*e.g.*, burns, lacerations, insect stings or animal bites);

“(2) The injury was witnessed or reported promptly and no dispute exists as to the fact of injury; and

“(3) No time was lost from work due to disability.”<sup>8</sup>

In this case, the record reflects that appellant received an abrasion to the right side of his neck, along with a cut and abrasion on his left elbow, the type of injuries set forth in the first criterion set forth above.<sup>9</sup> The traumatic injury report contains a detailed description of appellant's injuries, by a witness Mr. Gonzalez, indicating appellant had: “an abrasion on the right side of his neck and on his left elbow.” He also indicated that appellant had a cut on his left elbow.<sup>10</sup> Although Mr. Gonzalez' report is not of probative medical value because he is not a physician,<sup>11</sup> his account and observations as a layperson, establish the presence of the claimed injuries at the time and place of the accepted incident.

As fact of injury has been established, the case must be remanded to the Office for further development. The Office made no findings regarding the period and extent of any work-related disability.<sup>12</sup> Further, appellant is entitled to compensation for any medical expenses related to his injury.<sup>13</sup> Also, appellant's report indicates that he sustained right knee pain as a result of the February 13, 2002 incident. After such further development as it considers necessary, the Office shall issue an appropriate decision on appellant's entitlement to benefits.

As appellant filed his appeal with the Board on May 30, 2002, the Office's September 10, 2002 decision is considered null and void.<sup>14</sup>

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<sup>7</sup> *Timothy D. Douglas*, 49 ECAB 558 (1998).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3d(2) (November 1991).

<sup>9</sup> It also reflects that he complained of pain in his right knee.

<sup>10</sup> The witness also indicated that appellant was complaining of pain in the right knee.

<sup>11</sup> *Joseph N. Fassi*, 42 ECAB 677 (1991).

<sup>12</sup> *Leon C. Collier*, 37 ECAB 378-80 (1986).

<sup>13</sup> See *Frederick Justiniano*, 45 ECAB 491, 496 (1994); *Billy Ware Forbes*, 45 ECAB 157, 163 (1993); 5 U.S.C. § 8103.

<sup>14</sup> *Douglas E. Billings*, 41 ECAB 880 (1990).

The April 11, 2002 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this opinion.

Dated, Washington, DC  
March 19, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member