

**United States Department of Labor
Employees' Compensation Appeals Board**

GEORGE R. BRONISZ, Appellant

and

**U.S. POSTAL SERVICE, FOX CHASE
STATION, Philadelphia, PA, Employer**

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**Docket No. 04-1159
Issued: August 23, 2004**

Appearances:
George R. Bronisz, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On March 29, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated March 4, 2004 denying his claim for an injury on March 21, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction of the merits of this case.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on March 21, 2003 when a customer spat in his face.

FACTUAL HISTORY

On January 14, 2004 appellant, then a 54-year-old letter carrier, filed a traumatic injury claim alleging that on March 21, 2003 he sustained an injury when a customer spat in his face.

By letter dated February 2, 2004, the Office advised appellant that he needed to provide medical evidence in support of his claim.

In clinical notes dated March 24, 2003, Dr. James Lamprakos, a family practitioner, stated that a customer spat in appellant's face on March 21, 2003 and he was concerned that he might have been exposed to a condition such as a human immunodeficiency virus (HIV) infection because he had a small open wound over his eyebrow and was being treated for hepatitis B and C. Dr. Lamprakos indicated that appellant's physical examination was normal but he could be tested for HIV if he wished. He explained the HIV protocol to appellant. There is no indication in the record that appellant underwent any further medical testing or treatment regarding the March 21, 2003 employment incident.

By decision dated March 4, 2004, the Office denied appellant's claim on the grounds that there was no medical evidence of record establishing that he sustained an injury causally related to the March 21, 2003 incident when a customer spat in his face.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 or specific condition for which compensation is claimed is causally related to the employment injury.²

To determine whether a federal employee has sustained a traumatic injury case 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.³ Second, the employee must submit sufficient evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁴ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or medical condition was related to the employment incident. As the Office did not dispute that the March 21, 2003 employment incident occurred at the time, place and in the manner alleged, the remaining issue is whether the alleged injury was caused by the employment incident.

In order to satisfy his or her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.⁵

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Shirley A. Temple*, 48 ECAB 404 (1997).

⁵ *Gary L. Fowler*, 45 ECAB 365 (1994).

ANALYSIS

The Office accepted the incident that a customer spat in appellant's face on March 21, 2003. However, the Board finds that there is no medical evidence of record that the customer had HIV which could have been transmitted to appellant. While appellant has established that he was spat on, he has not established that he was exposed to HIV. Appellant provided no medical evidence that he sustained any injury as a result of the March 21, 2003 employment incident. In notes dated March 24, 2003, Dr. Lamprakos indicated that a customer spat in appellant's face on March 21, 2003 and noted that appellant was concerned that he might have been exposed to a condition such as HIV because of a small open wound on his face. However, Dr. Lamprakos indicated that appellant's physical examination was normal. He advised appellant that he could undergo testing for HIV but there is no indication in the record that appellant underwent any further medical testing or treatment regarding the March 21, 2003 employment incident.⁶ There is no medical evidence of record establishing that appellant sustained any medical condition causally related to the March 21, 2003 employment incident. As noted above, it is an employee's burden of proof to establish, through rationalized medical evidence that an injury occurred as a result of an employment incident before he may be entitled to compensation benefits. Appellant failed to meet this burden.

CONCLUSION

Appellant failed to provide rationalized medical evidence establishing that he sustained an injury causally related to the March 21, 2003 employment injury. Accordingly, the Office properly denied his claim.

⁶ The Office's Procedure Manual at Chapter 3.400.7 discusses medical services and supplies provided by the Office and the employing establishment. Regarding preventative, prophylactic treatment the manual states that the Act does not authorize provision of preventive measures such as vaccines and inoculations, and in general, preventative treatment is a responsibility of the employing establishment under the provisions of 5 U.S.C. § 7901. However, preventative care can be authorized by the Office for certain circumstances including an injury involving actual or probable exposure to a known contaminant, thereby requiring disease-specific measures against infection. Included among such treatment would be tetanus antitoxin or booster toxoid injections for puncture wounds; administration of rabies vaccine where a bite from a rabid animal, or one whose status was unknown, is involved; or AZT where exposure to HIV virus has occurred.

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member