

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

JOHN HARKINS, Appellant

and

**DEPARTMENT OF THE TREASURY, U.S.
MINT, Philadelphia, PA, Employer**

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**Docket No. 04-1186
Issued: August 23, 2004**

Appearances:
John Harkins, 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
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On April 1, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 23, 2004 finding that appellant failed to establish that he sustained an injury on September 19, 2002 as alleged. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury on September 19, 2002, as alleged.

FACTUAL HISTORY

On November 18, 2002 appellant, then a 37-year-old die setter, filed a traumatic injury claim alleging that on September 19, 2002 he injured his back opening and closing press doors in the performance of duty. On the reverse of the form, appellant's supervisor, Michael Hawkins, stated that appellant reported that he was not hurt on the job and that he referred appellant to the

health unit due to complaints of back pain. In a separate statement dated September 19, 2002, Mr. Hawkins repeated that appellant stated that his back pain was not work related.

On September 19, 2002 treatment notes at the employing establishment health unit indicate that appellant stated: "My back started to hurt me a few days ago. I can't say it is work related either." On September 23, 2002 appellant again sought treatment at the health unit and stated that he was not exactly sure when his back began hurting. Appellant sought treatment at the Christiana Hospital on September 25, 2002 and Dr. George Zlupko, a physician Board-certified in emergency medicine, diagnosed sciatica.

In a report dated October 24, 2002, Dr. Jonathan B. Levyn, an osteopath and appellant's attending physician, diagnosed work-related lumbar radicular symptoms. Dr. Levyn released appellant to return to work in a light-duty capacity on November 12, 2002. On November 13, 2002 the health unit notes stated that appellant was under the care of Dr. Levyn and awaiting approval of a magnetic resonance imaging (MRI) scan.

Appellant participated in an employing establishment investigation on December 2, 2002 and stated that his back started hurting because he had to repeatedly open the hoods on the press due to wood chips jamming the presses. The employing establishment controverted appellant's claim noting that he exaggerated the number of times he opened the doors. Victoria Lepczyk, the workers' compensation benefits specialist, interviewed appellant on September 19, 2002 and reported that he stated that his back condition was due to his bed.

The Office requested additional factual and medical evidence, by letter dated December 24, 2002. Appellant did not respond. By decision dated January 24, 2003, the Office denied appellant's claim finding that he failed to establish that the injury occurred as alleged.

On February 27, 2003 the Office received a reconsideration request from appellant alleging that he never received the December 24, 2002 request for information. By decision dated May 27, 2003, the Office denied appellant's request for reconsideration.

Dr. Levyn diagnosed lumbar strain and sprain on October 10, 2002. On October 22, 2002 he stated that appellant was injured at work and had lumbar radicular symptoms. On November 4, 2002 he diagnosed work-related back pain. Dr. Levyn completed a note on November 12, 2002 and stated that appellant returned to light duty on November 13, 2002.

Appellant submitted a statement on July 2, 2003 and asserted that his back pain began on September 16, 2002 after repeatedly opening and closing the press door due to wood chips. He stated that his back hurt on September 17 and 18, 2002 under the same circumstances with increasing back pain. Appellant stated that he first sought medical treatment on September 19, 2002 and informed the nurse at the health unit that his back had been hurting for a few days due to the presses. Appellant alleged that he had informed Mr. Hawkins of his back pain on September 19, 2002 and that he stated that he was not sure which press caused his pain or how he injured his back.

Appellant requested reconsideration on December 4, 2003. By decision dated February 23, 2004, the Office reviewed the merits of appellant's claim and denied modification

as he attributed his back condition to employment exposures over several days and noted that appellant had filed a separate claim for an occupational disease due to the same condition.

LEGAL PRECEDENT

The Office's regulation define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift" while a traumatic injury is "a condition of the body caused by a specific event or incident or a series of events or incident, within a single workday or shift."¹

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 are causally related to the employment injury."² 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.³

In order to determine whether an employee actually sustained a traumatic 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.⁴ In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.⁵ An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁶ A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.⁷

¹ 20 C.F.R. § 10.5(q) and (ee).

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁴ *Elaine Pendleton*, *supra* note 2.

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

⁶ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁷ *Id.* at 255, 256.

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.⁸

ANALYSIS

In this case, appellant initially alleged that he developed a back injury due to employment activities on September 19, 2002. However, in statements to his supervisor and the employing establishment health unit, appellant indicated that he was unaware of when or how his back injury occurred. The workers' compensation benefits specialist asserted that appellant attributed his back condition to his bed. Appellant did not provide a consistent history of the injury to his physician, to his supervisor and on the notice of injury. Furthermore, in his most recent statement dated December 11, 2003, appellant indicated that his back pain began on September 16, 2002 and gradually increased through September 19, 2002, when he first sought medical treatment. This allegation more properly relates to a claim for an occupational disease and does not support appellant's alleged traumatic injury on September 19, 2002. As appellant had not established an injury due to a traumatic work incident, the Office properly denied his claim.⁹

CONCLUSION

The Board finds that appellant had not established that he sustained an injury as the result of a specific event or incident or a series of events or incidents, within a single workday or shift on a single day and that the Office therefore properly denied his claim for a traumatic injury occurring on September 19, 2002, as alleged.

⁸ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁹ The Office indicated that appellant was pursuing the occupational disease aspect of his claim under a separate claim number and the Board will not address this aspect of appellant's claim on appeal. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the February 23, 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

A. Peter Kanjorski
Alternate Member