

February 19, 2003, and his manager suggested that he go to the nurse's station to get checked out. He indicated that he was sent to George Washington University Hospital by ambulance for an evaluation. In support of his claim, appellant submitted an August 6, 2003 letter in which he informed the Office about accompanying delinquent medical bills resulting from his claim that it had not paid.¹

Dorothy J. Hankinson, appellant's supervisor, indicated on appellant's claim form that he also complained about a tightening sensation in his chest. She stated that an employing establishment physician wanted appellant to go to the hospital as a precautionary measure and she supported that decision.

By letter dated June 3, 2004, the Office advised appellant that his claim was originally received as a "simple, uncontroverted case that resulted in minimal or no time lost from work." The Office explained that these types of cases were administratively handled to allow medical payments up to \$1,500.00 but, noted that the merits of appellant's claim had not been formally considered. The Office informed appellant that his claim had been opened for adjudication upon notification from the bill-pay department that the medical bills submitted could not be processed and they had been rejected for some reason. The Office noted that these medical bills appeared to request payment for conditions unrelated to appellant's claimed right cheek and eye conditions. The Office also advised appellant that the evidence submitted with his claim was insufficient to establish entitlement to compensation. The Office then advised him about the type of factual and medical evidence he needed to submit within 30 days to establish his claim. Appellant did not respond within the 30-day time period.

On the same date the Office issued the June 3, 2003 development letter, it received an electronic mail message in which the employing establishment indicated that appellant's case was on hold. The employing establishment stated that it told appellant to go to the hospital but, he was diagnosed as having shortness of breath when he had complained about irritation to the right cheek and hand area. The employing establishment stated that the second problem was the amount it was charged for a stress test, x-rays and an electrocardiogram, which indicated a heart problem. The employing establishment concluded that a decision from the Office was necessary before continuing with the case.

In a decision dated July 15, 2004, the Office denied appellant's claim on the grounds that he failed to establish that he sustained an injury in the performance of duty. The Office found the evidence of record insufficient to establish that he experienced the event at the time, place and in the manner alleged. The Office further found the record devoid of any medical evidence supporting a diagnosis causally related to the claimed event.²

¹ The Board notes that appellant's case record does not contain any medical bills.

² On appeal appellant has submitted new evidence. 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, 36 n.2 (1952); 20 C.F.R. § 501.2(c). Appellant can submit the new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2) (1999).

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

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. In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.⁶ 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.⁷ 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.⁸

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁹ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.¹⁰ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.¹¹

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ See *Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 4.

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁸ *Id.* at 255, 256.

⁹ *John J. Carlone*, *supra* note 6; see 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

¹⁰ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

¹¹ *Charles E. Evans*, 48 ECAB 692 (1997).

ANALYSIS

Regarding the first component, appellant has submitted only a singular uncontroverted statement on his claim form describing the incident he allegedly occurred in the performance of duty on February 18, 2003. The employing establishment did not dispute appellant's account of the incident. Ms. Hankinson, appellant's supervisor, indicated that, in addition to appellant's complaints about his right cheek and hands, appellant complained about tightness in his chest. She noted that he was sent to the hospital via ambulance based on the recommendation of an employing establishment physician, a decision within which she agreed. The employing establishment's electronic mail message again acknowledged that it sent appellant to the hospital due to his complaints about irritation to the right cheek and hand area and noted that he was diagnosed as having shortness of breath. Although appellant filed his claim on March 13, 2003, nearly one month after the alleged incident on February 18, 2003, there is no evidence disputing that he felt a burning sensation in his right eye and cheek area, the skin on his hands became dry and he experienced tightness in his chest after opening mail on February 18, 2003. Thus, the Board finds that appellant has established that the incident occurred at the time, place and in the manner alleged.

Regarding the second component, the Board notes that appellant has not submitted any medical evidence establishing that he sustained an injury as a result of the accepted employment incident. As there is no medical evidence in the record establishing an injury as a result of the February 18, 2003 employment incident, appellant has failed to meet his burden of proof in this case.

CONCLUSION

The Board finds that, while the record establishes that the incident occurred as alleged, he has failed to establish that he sustained an injury in the performance of duty on February 18, 2003.

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2004 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: December 28, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member