

an April 18, 2003 letter, the employing establishment controverted the claim on the grounds that he had not submitted any medical evidence establishing an injurious chemical exposure.

In an April 23, 2003 letter, the Office advised appellant of the type of additional factual and medical evidence needed to establish his claim. The Office noted that appellant must submit factual evidence identifying the substances to which he was allegedly exposed. Also, appellant was to provide a detailed report from his attending physician explaining how and why the identified chemical exposures would cause the claimed medical condition. Appellant was afforded 30 days in which to submit such evidence. The record indicates that appellant did not submit additional evidence prior to the issuance of the Office's decision.

By decision dated May 27, 2003, the Office denied the claim on the grounds that fact of injury was not established. The Office found that appellant did not submit information identifying the chemicals to which he was allegedly exposed. The Office further found that appellant did not submit medical evidence supporting a causal relationship between the alleged occupational chemical exposure and any medical condition.

In a June 24, 2003 letter, appellant requested an oral hearing before a representative of the Office's Branch of Hearings and Review, held November 26, 2003. At the hearing, appellant asserted that on March 25, 2003 a package containing an antique glass "grenade" fire extinguisher began to leak, releasing a gelatinous substance with a strong odor. He alleged that exposure to this odor caused nausea, dizziness, headaches and an upset stomach. This exposure continued for approximately 20 minutes until Colleen Wallach, a custodial worker and hazardous materials responder, arrived to remove the leaking package and the bin in which appellant had placed it to the hazardous materials area. After returning home that night, Mr. Dugdale, a supervisor, telephoned appellant and instructed him to report to the hospital immediately as the substance may have been hazardous. Appellant reported to the emergency room and was placed under observation. Mark Rubek, one of appellant's coworkers, alleged that when Ms. Wallach cleaned the plastic bin in which the chemical had leaked, the chemical reacted with water and melted her gloves and plastic packing peanuts that were also in the bin. This led Mr. Rubek to conclude that the chemical involved was carbon tetrachloride. The hearing representative held the record open for 30 days to allow appellant to submit additional medical evidence. Appellant submitted additional evidence following the hearing.

In a November 25, 2003 statement, appellant asserted that he was exposed to carbon tetrachloride from the leaking fire grenade on March 25, 2003 as the chemical burned the bottom of the plastic bin in which a custodial worker had placed it. He explained that carbon tetrachloride was a carcinogen that could cause liver and kidney damage. Appellant alleged that this exposure caused depression, insomnia, lightheadedness, headaches, stress and social anxiety disorder requiring continuing medical treatment.

Appellant submitted March 31 and April 1, 2003 statements from Coworkers Kraston Scott, John Volovich and Daniel Sindorf stating that they did not know what was in the leaking package. Ms. Wallach stated that on March 25, 2003 when she "put water on tub it cryst[all]ize[d]" and that the package was removed from the building prior to the arrival of outside emergency crews. William Roche, one of appellant's coworkers, stated that the

substance in the package was “chormethade” and that he was “the one who found out what it was.”

In an undated statement, Mr. Sindorf noted that on March 25, 2003 he was informed by a hospital poison control center that the chemical in the fire grenade might have been hazardous. Thus, Ms. Wallach was referred to the emergency room as she sustained a small cut on her hand while cleaning the mail bin and the substance could have contaminated the cut.

Appellant also submitted materials printed from internet sites regarding carbon tetrachloride and antique glass fire grenades. He also provided documents pertaining to a union grievance regarding the safety aspects of the March 25, 2003 incident. The Step 1 level grievance was denied.

Appellant also submitted medical evidence: a July 28, 1993 preemployment physical report; a March 26, 2003 slip from Dr. John Harris, an attending Board-certified internist, stating that appellant could return to work without restrictions; and a negative throat culture test for streptococcus A performed on March 28, 2003.

In a December 22, 2003 letter, the employing establishment submitted comments on the hearing transcript. The employing establishment stated that it had “no disagreement with [appellant’s] statement indicating [that] he came in contact with a package leaking chemicals while emptying a mail container.” However, the employing establishment contended that the chemical in the fire grenade was methylene chloride, not carbon tetrachloride. The employing establishment explained that methylene chloride would have crystallized when mixed with water, as Ms. Wallach observed when she cleaned the bin. However, the employing establishment contended that there was “no evidence that the substance melted her gloves or caused burns to her hands in any way.”

By decision dated and finalized February 5, 2004, the Office hearing representative affirmed the May 27, 2003 decision. The hearing representative found that appellant submitted insufficient evidence to substantiate that he was exposed to carbon tetrachloride as alleged, noting that the factual evidence indicated that the fire grenade was filled with methylene chloride, a less toxic substance. The hearing representative noted in particular that appellant had not established his allegation that the chemical in the fire grenade melted plastic gloves and plastic packing peanuts, a reaction indicative of carbon tetrachloride. The hearing representative further found that regardless of which chemical the fire grenade contained, appellant did not submit medical evidence demonstrating that such exposure caused or aggravated any injury or condition.

LEGAL PRECEDENT

An employee seeking benefits under the 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any

¹ 5 U.S.C. §§ 8101-8193.

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 on a traumatic injury or an occupational disease.³

In order to determine whether an employee 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 that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁴ 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.⁵

ANALYSIS

Appellant alleged that on March 25, 2003 he was exposed to carbon tetrachloride from a leaking antique glass fire grenade, causing headaches, lightheadedness, anxiety, depression, social anxiety disorder and stress. The employing establishment acknowledged that on March 25, 2003 appellant “came in contact with a package leaking chemicals while emptying a mail container” but asserted that the substance was not carbon tetrachloride. Thus, the Board finds that appellant submitted sufficient evidence to establish an occupational chemical exposure on March 25, 2003.⁶ In order to prevail, appellant must then submit sufficient medical evidence to establish that the accepted chemical exposure caused an injury. The Board finds, however, that appellant did not submit such evidence.

In support of his claim, appellant submitted a July 28, 1993 preemployment physical report, a March 26, 2003 slip from Dr. Harris, an attending Board-certified internist, releasing him to full duty and a March 28, 2003 throat culture report showing a negative result for streptococcus A. As the preemployment physical predates the March 25, 2003 chemical exposure, it is of very little relevance in establishing causal relationship in this case. Also, neither Dr. Harris’ slip nor the throat culture report mentioned the March 25, 2003 chemical exposure or any other work factor. Although appellant asserted that the March 25, 2003 incident caused persistent headaches and psychiatric problems, he did not submit any treatment records for those conditions or a statement from his attending physicians that any element of his condition was attributable to the March 25, 2003 exposure. Additionally, the record indicates that, following the March 25, 2003 chemical exposure, appellant was under observation in a hospital as directed by the employing establishment. However, there are no medical reports, toxicity screen results, cardiac test results, neurological test results, liver function panels, kidney

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Gary J. Watling*, 52 ECAB 278 (2001).

⁵ *Deborah L. Beatty*, 54 ECAB ____ (Docket No. 02-2294, issued January 15, 2003).

⁶ *Gary J. Watling*, *supra* note 4.

function panels, urinalyses, skin swabs or any other laboratory reports of record from this hospitalization.

The Board notes that appellant was advised by the April 23, 2003 letter of the necessity of submitting rationalized medical evidence supporting a causal relationship between the March 25, 2003 chemical exposure and the claimed injuries. However, appellant did not submit such evidence. Therefore, the Board finds that appellant has not established that he sustained any injury due to the March 25, 2003 chemical exposure.⁷

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty on March 25, 2003 as alleged as he submitted insufficient medical evidence to establish that the accepted chemical exposure caused or aggravated any injury or condition.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 5, 2004 and May 27, 2003 are affirmed.

Issued: August 18, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

⁷ *Guiseppe Aversa*, 55 ECAB ____ (Docket No. 03-2042, issued December 12, 2003).