

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

CARLOS LOZADA, Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
TRANSPORTATION SECURITY
ADMINISTRATION, Reston, VA, Employer**

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**Docket No. 05-72
Issued: March 17, 2005**

Appearances:
Carlos Lozada, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On October 5, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated July 28, 2004, which found that he did not sustain an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty on May 28, 2003.

FACTUAL HISTORY

On June 1, 2003 appellant, then a 44-year-old transportation security screener, filed a traumatic injury claim (Form CA-1) alleging that on May 28, 2003 he lifted a heavy bag and pulled his left calf muscle in the performance of duty. The record does not indicate that he stopped work.

By letter dated June 10, 2004, the Office advised appellant that additional factual and medical evidence was needed. He was advised that no diagnosis of a condition resulting from the injury was provided. Appellant was further advised to provide a physician's opinion supported by a medical explanation as to how the reported work incident caused the claimed injury. The Office allotted him 30 days within which to submit the requested information.¹ No response or information was received.

By decision dated July 28, 2004, the Office denied appellant's claim on the grounds that he did not establish an injury as alleged. The Office found that the evidence was sufficient to establish that the events occurred as alleged; however, no medical evidence was received which related a medical condition to employment factors.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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 Act³ and that an injury was sustained in the performance of duty.⁴ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To determine whether a federal employee has sustained a traumatic injury 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.⁶ 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.⁷

ANALYSIS

In the instant case, the Office found that the evidence of file supported that the claimed events occurred.

¹ The Office also indicated to appellant that a recurrence claim could not be considered before information concerning his original injury was received.

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *Delores C. Ellyett*, 41 ECAB 992 (1990).

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

⁷ *Id.*

However, the medical evidence is insufficient to establish the second component of fact of injury, that the employment incident caused an injury. Appellant failed to submit any medical evidence providing a firm diagnosis of an injury or addressing whether his injury was related to his May 28, 2003 work incident. For example, he did not submit medical evidence explaining how and why lifting a bag would have caused or aggravated a particular medical condition. The Office advised appellant of the deficiency in the medical evidence, but he failed to submit rationalized medical opinion evidence addressing the relevant issues. Appellant, therefore, failed to meet his burden of proof.⁸

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2004 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: March 17, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁸ The Board notes that, subsequent to the Office's July 28, 2004 decision, appellant alleged that additional evidence was submitted. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952). Appellant may 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); *see* 20 C.F.R. § 501.2(c).