United States Department of Labor
Employees' Compensation Appeals Board

KEITH E. HUNSUCKER, Appellant	)	
and	)	**Docket No. 05-128**
	)	**Issued: March 24, 2005**
DEPARTMENT OF HOMELAND SECURITY, FEDERAL LAW ENFORCEMENT TRAINING CENTER, Glynco, GA, Employer	)	

Appearances:
Keith E. Hunsucker, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On October 8, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated July 27, 2004 finding that he had not established an injury on April 22, 2004. 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 met his burden of proof in establishing that he sustained an injury in the performance of duty.

FACTUAL HISTORY

On April 22, 2004 appellant, then a 41-year-old senior instructor, legal division, filed a traumatic injury claim alleging that on April 22, 2004 while participating in interactive force drill, he chipped his left front tooth. On April 26, 2004 a witness noted participating in a drill with appellant and stated that appellant remarked that he had chipped a tooth following

accidental contact with the witness. Appellant's supervisor, on May 4, 2004, indicated that his knowledge of the injury agreed with that provided by appellant. The employing establishment indicated that it received notice of the claimed injury on April 22, 2004. Appellant did not stop work.

By letter dated June 2, 2004, the Office advised appellant to submit additional information regarding his claim.

By decision dated July 27, 2004, the Office found that appellant established that the incident occurred as alleged, but denied his claim on the grounds that he failed to submit medical evidence to establish that a medical condition occurred as a result of the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[2]

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. There are two components involved in establishing fact of injury which must be considered. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally in the form of medical evidence to establish that the employment incident caused the personal injury.[3]

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.[4] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[5] The Office cannot find fact of injury

[1] 5 U.S.C. §§ 8101-8193.

[2] *Gabe Brooks*, 51 ECAB 184 (1999).

[3] *Gloria J. McPherson*, 51 ECAB 441 (2000).

[4] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[5] *Id*.

if the evidence fails to establish that the employee sustained an "injury" within the meaning of the Act.

ANALYSIS

In this case, the Office found that the incident as alleged by appellant occurred on April 22, 2004. The Office, on June 2, 2004, advised him that the evidence he had submitted to support his claim of a work-related injury on April 22, 2004 was insufficient to establish his claim and advised him to submit additional evidence including dates of examination and treatment, and his physician's opinion supported by a medical explanation as to how the reported work incident caused the injury.

The record, however, contains no additional evidence submitted after the Office's June 2, 2004 letter and thus failed to establish that a medical condition occurred as a result of the April 22, 2004 incident.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty.[6]

[6] Appellant submitted new evidence to the Board in support of his appeal request. However, the Board is limited to review of evidence which was before the Office at the time of its final decision and therefore will not review new evidence on appeal. 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting such evidence to the Office as part of a reconsideration request.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 27, 2004 is affirmed.

Issued: March 24, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member