

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

WILLIE H. WALKER, JR., Appellant

and

**DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD,
Bremerton, WA, Employer**

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**Docket No. 05-1900
Issued: February 10, 2006**

Appearances:
Willie H. Walker, Jr., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 13, 2005 appellant filed a timely appeal from the May 27, 2005 merit decision of the Office of Workers' Compensation Programs which denied compensation for wage loss beginning September 14, 1984. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the Office's denial.

ISSUE

The issue is whether appellant was disabled on September 14, 1984 as a result of his accepted employment injury.

FACTUAL HISTORY

On the prior appeal of this case,¹ the Board found that the January 30, 1997 and January 11, 2001 opinions of Dr. Edwin L. Boyd, a Board-certified otolaryngologist, were sufficiently supportive of an employment-related asthma condition to require further

¹ Docket No. 01-1601 (issued January 14, 2003).

development of the claim. The facts of this case, as set forth in prior Board decisions, are hereby incorporated by reference.²

After further development of the evidence, the Office notified appellant on January 30, 2004 that his claim was accepted for temporary aggravation of asthma. The Office stated: “If your injury results in lost time from work, you may claim disability compensation using Form CA-7.”

On June 9, 2004 appellant filed a Form CA-7 claiming compensation for wage loss beginning September 14, 1984.

In a decision dated May 27, 2005, the Office denied compensation for wage loss beginning September 14, 1984. The Office noted that appellant stopped work on September 14, 1984 because he was terminated for misconduct, not because of his accepted work injury. Under the circumstances, the Office found that he had no entitlement to compensation for disability.

LEGAL PRECEDENT

Section 8102(a) of the Federal Employees’ Compensation Act provides that the United States “shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty....”³ As used in the Act, the term “disability” means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.⁴

A claimant seeking benefits under the Act has the burden of proof to establish the essential elements of his claim by the weight of the evidence,⁵ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁶ Causal relationship is medical in nature and can be established only by medical evidence.⁷

When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁸ When a claimant stops working at the employing establishment for reasons

² See Docket No. 98-1760 (issued June 16, 2000); Docket No. 94-1743 (issued February 7, 1996); Docket No. 92-2004 (issued October 8, 1993); Docket No. 89-1814 (issued May 15, 1990).

³ 5 U.S.C. § 8102(a).

⁴ 20 C.F.R. § 10.5(f) (1999).

⁵ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *Ausberto Guzman*, 25 ECAB 362 (1974).

⁸ *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

unrelated to his employment-related physical condition, he has no disability within the meaning of the Act.⁹

ANALYSIS

Appellant did not meet his burden of proof to establish that he stopped work on September 14, 1984 as a result of his accepted employment injury. He filed a claim for compensation on June 9, 2004 but submitted no medical opinion evidence to support that the residuals of his employment injury prevented him from continuing in his employment beginning September 14, 1984.

The record establishes that appellant was removed from his position effective September 14, 1984 on charges of resisting competent authorities and threatening a coworker and supervisors. A January 9, 1985 decision of the Merit Systems Protection Board, which affirmed the employing establishment's action, details the incident on August 3, 1984 that led to his termination. On August 9, 1984 when appellant sought psychiatric treatment for pressure at work, he reported that he was very anxious and concerned regarding the incident and his general treatment by management and coworkers, but appellant denied any physical complaints.

Because appellant submitted no evidence to show that he stopped work on September 14, 1984 as a result of his accepted employment injury, the Board will affirm the Office's May 27, 2005 decision, denying compensation for wage loss.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he stopped work on September 14, 1984 as a result of his accepted employment injury. The evidence shows instead, that he was terminated effective September 14, 1984 for misconduct, which provides no basis for the payment of workers' compensation.

⁹ *Lester Covington*, 47 ECAB 539 (1996).

ORDER

IT IS HEREBY ORDERED THAT the May 27, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 10, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board