

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

---

**D.H., Appellant**

**and**

**DEPARTMENT OF THE ARMY,  
Fort Benning, GA, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 07-826  
Issued: August 2, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 5, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 19, 2007 denying his claim for compensation. 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 has established a left hand injury in the performance of duty on or about May 31, 2006.

**FACTUAL HISTORY**

On August 31, 2006 appellant filed a traumatic injury claim (Form CA-1), alleging that he sustained a left hand injury on May 31, 2006. The claim form stated that he was sitting at his desk assisting a customer when "he saw something jump off his hand" but was unable to see exactly what had been on his hand. Appellant indicated that later his left hand began to swell. A

witness, Ms. Dorsey, reported on the claim form that on the day of the incident appellant's hand was swollen with a knot at the top.

Appellant submitted medical evidence that included a hospital report dated June 4, 2006 with a diagnosis of cellulitis of the left hand. A June 6, 2006 report from Dr. David Lipton, an orthopedic surgeon, indicated that he was discharged with a diagnosis of left hand abscess.

By decision dated October 20, 2006, the Office denied the claim for compensation. It determined that appellant had not established an employment incident or a resulting medical condition.

Appellant requested a review of the written record and submitted additional evidence. In a narrative statement, he reported that on June 1, 2006 he was at his desk when a "spider or something that appeared like a spider bit me on the hand." Appellant indicated that he felt a tingling feeling and noticed a tiny hole on the side of his hand. He stated that on the third day he noticed a little swelling but by the next day there was significant swelling and he sought treatment.

In a June 6, 2006 report, Dr. Lipton provided a history that appellant was injured at work a week earlier. He diagnosed left hand abscess and a surgical incision and drainage was performed. In another report dated June 6, 2006, Dr. Patricia Martin provided a history that appellant complained of a spider or mosquito bite that he believed happened on May 31, 2006. She stated that he noticed a small bump on his left hand after feeling a pinching sensation. Dr. Martin provided results on examination and diagnosed severe infection of the left hand "which may or may not be related to spider bite" and status post incision and drainage.

By decision dated January 19, 2007, the Office hearing representative affirmed the denial of appellant's claim. He found that it was accepted as factual that on May 31, 2006 something jumped off appellant's hand, but the medical evidence was insufficient to establish an injury causally related to the employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing that he or she sustained an injury while in the performance of duty.<sup>2</sup> 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. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

employment incident caused a personal injury, and generally this can be established only by medical evidence.<sup>3</sup>

The Office's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection, such as an insect sting or animal bite.<sup>4</sup> In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.<sup>5</sup>

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

### ANALYSIS

The allegation in this case, is that on or about May 31, 2006 appellant was bitten on the left hand by a small creature such as a spider or an insect.<sup>7</sup> Although he cannot identify the offending creature, that in itself would not preclude establishment of the claim.<sup>8</sup> In similar cases involving an alleged bite by a spider or insect, the Board has looked at the surrounding factual and medical evidence to determine if it is sufficient to establish that the claimant was bitten while in the performance of duty.<sup>9</sup>

Appellant alleged that he felt something on his left hand and that he had a tingling sensation after he saw something jump off his hand. There is nothing in the record that is inconsistent with this allegation. As noted above, the Office's procedures do consider the possibility that an insect bite could be established even without medical evidence. In this case, the factual evidence is not sufficient to establish a spider or insect bite. The witness statement on the claim was brief and reported only a "knot" and swelling in the hand on the date of the

---

<sup>3</sup> See *John J. Carlone*, 41 ECAB 354, 357 (1989).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

<sup>5</sup> *Id.*

<sup>6</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

<sup>7</sup> In his narrative statement, appellant indicated that the incident occurred on June 1, 2006.

<sup>8</sup> See, e.g., *Doyle W. Ricketts*, 48 ECAB 167 (1996).

<sup>9</sup> *Id.*; see also *Linda S. Christian*, 46 ECAB 598 (1995).

incident. Appellant's own statement was inconsistent with the witness statement in that he indicated that he did not have any swelling until three days after the incident. The Board finds that this is not a case where a bite may be accepted based on factual evidence alone.

With respect to the medical evidence, the record does not contain a diagnosis of a spider or other bite. Appellant clearly had left hand symptoms and received treatment, including an incision and drainage procedure by Dr. Lipton on June 6, 2006. Dr. Lipton diagnosed a left hand abscess without providing an opinion on causation. Dr. Martin diagnosed an infection "which may or may not be related to spider bite." She did not diagnose a spider bite or provide a rationalized opinion relating a diagnosed condition to an employment incident.

The Board accordingly finds that the evidence of record is insufficient to establish that appellant sustained a bite from a spider, insect or other creature while in the performance of duty. The Office properly found that an injury in the performance of duty had not been established in this case.

**CONCLUSION**

The evidence of record does not establish a left hand injury in the performance of duty on or about May 31, 2006.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 19, 2007 is affirmed.

Issued: August 2, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board