

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

M.R., Appellant

and

**DEPARTMENT OF JUSTICE, FEDERAL
BUREAU OF INVESTIGATION, New York, NY,
Employer**

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**Docket No. 07-2062
Issued: January 29, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 13, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 6, 2007 denying her 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 sustained an injury on March 27, 2007 causally related to her federal employment.

FACTUAL HISTORY

On April 9, 2007 appellant, then a 35-year-old agent, filed a traumatic injury claim (Form CA-1) alleging that while she was in South America she sustained an injury on March 27, 2007. She described the nature of the injury as abdominal cramping, diarrhea, fever, aches and nausea. Appellant attributed the injury to eating or drinking water while she was in South America. A

supervisor submitted a statement indicating that appellant was required to travel on a security matter to South America. Appellant and a coworker became ill on the last night of the trip.

In a note dated April 5, 2007, Dr. Jean Messihi, an internist, indicated that appellant was unable to work from April 2 to 5, 2007 due to infectious gastroenteritis. The Office advised appellant by letter dated April 25, 2007 that additional evidence was needed to establish her claim. No evidence was submitted.

By decision dated June 6, 2007, the Office denied the claim for compensation. The Office found that appellant had not submitted sufficient medical evidence to establish the claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including 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 and that an injury was sustained in the performance of duty as alleged.²

The Board has recognized that Larson, in his treatise, *The Law of Workers' Compensation*, sets forth the general criteria for performance of duty as it relates to travel employees or employees on temporary-duty assignments as follows:

"Employees whose work entails travel away from the employer's premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown. Thus, injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable."³

It is not sufficient, however, simply to show that an employee is on a special mission or in travel status during the time a disabling condition manifests itself.⁴ The medical evidence must establish an injury causally related to activities incidental to the travel assignment.⁵

ANALYSIS

Appellant alleged that she became ill while in travel status on March 27, 2007 as a result of either eating food or drinking water. As noted, she must submit medical evidence on causal relationship between a diagnosed condition and an incident of her travel. The only evidence the

¹ 5 U.S.C. §§ 8101-8193.

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ 1 A. Larson, *The Law of Workers' Compensation* § 25.01 (2000); see also *Lawrence J. Kolodzi*, 44 ECAB 818, 822 (1993).

⁴ See *William B. Merrill*, 24 ECAB 215, 219 (1973).

⁵ *Id.*

Board may review is the evidence that was before the Office at the time of its June 6, 2007 decision.⁶ At that time appellant had submitted the April 5, 2007 report of Dr. Messihi diagnosing infectious gastroenteritis. Dr. Messihi did not provide any factual history or medical background or an opinion on causal relationship between the gastroenteritis and incidents of her travel. In the absence of probative medical evidence, the Board finds that appellant did not meet her burden of proof in this case.

CONCLUSION

The medical evidence did not establish causal relationship between a diagnosed condition and activities incidental to her employment-related travel.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 6, 2007 is affirmed.

Issued: January 29, 2008
Washington, DC

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

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

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

⁶ 20 C.F.R. § 501.2(c). While appellant submitted new evidence on appeal, the Board may not review this evidence on the current appeal.