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

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| **M.M., Appellant** | ) | |
| **and** | ) | **Docket No. 08-458** |
| | ) | **Issued: June 4, 2008** |
| **DEPARTMENT OF THE AIR FORCE,** | ) | |
| **AL DHAFRA AIR FORCE BASE,** | ) | |
| **United Arab Emirates, Employer** | ) | |

*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
COLLEEN DUFFY KIKO, Judge

### ***JURISDICTION***

On December 5, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' November 9, 2007 merit decision denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

### ***ISSUE***

The issue is whether appellant sustained a traumatic injury while in the performance of duty on February 3, 2007.

### ***FACTUAL HISTORY***

On September 11, 2007 appellant, a 54-year-old sexual assault response coordinator, filed a traumatic injury claim (Form CA-1) alleging that on February 3, 2007 he cracked three teeth in the employing establishment dining facility, while he was "chewing and bit on a hard surface." He stated that he went to the medical clinic on base, from which he was taken downtown to the

dental clinic in Abu Dhabi. Appellant indicated that he underwent oral surgery for crown-lengthening on "numbers 3-5" while he was deployed in the "UAE," but returned to Columbus Air Force Base before the work was completed.

On July 2, 2007 the Office notified appellant that the evidence submitted was insufficient to establish his claim. The Office advised him to provide within 30 days additional information and documentation, including details surrounding the alleged incident, and a physician's report containing a specific diagnosis and an opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury. Appellant did not submit any medical evidence in support of his claim.

By decision dated November 9, 2007, the Office denied appellant's claim on the grounds that the evidence failed to establish that he had sustained an injury in the performance of duty. It found that he had failed to establish that the events occurred as alleged, and that he had submitted no medical evidence that provided a diagnosis which could be connected to the claimed event.[1]

## ***LEGAL PRECEDENT***

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing that he or she sustained an injury while in the performance of duty.[3] 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. An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged by a preponderance of the reliable, probative and substantial evidence.[4] An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his or her subsequent course of action. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment, may cast doubt on an employee's statements in determining whether he or she has established a *prima facie* case.[5] However, an employee's statement alleging that an injury occurred at a given

[1] The Board notes that the record on appeal contains additional evidence which was not before the Office at the time it issued its November 9, 2007 decision. The Board has no jurisdiction to review this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c). *See also Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

[2] 5 U.S.C. §§ 8101-8193.

[3] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

[4] *Charles B. Ward*, 38 ECAB 667 (1987).

[5] *See Paul Foster*, 56 ECAB 208 (2004). *See also Merton J. Sills*, 39 ECAB 572, 575 (1988).

time and in a given manner is of great probative value and will stand, unless refuted by strong or persuasive evidence.[6]

The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[7] As part of this burden, the claimant must present rationalized medical opinion evidence.[8] 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.[9] The opinion of the physician must be based on a complete factual and medical background of the claimant,[10] and must be one of reasonable medical certainty,[11] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[12]

## ***ANALYSIS***

While the Office properly found that appellant was in the performance of duty while he was eating lunch in the employer's cafeteria on February 3, 2007, the Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a traumatic injury while in the performance of duty on February 3, 2007. The evidence does not establish that the alleged incident caused a personal injury.

Appellant noted on his CA-1 form that he cracked three teeth in the employing establishment dining facility, while he was "chewing and bit on a hard surface." However, he provided no detailed account of injury, and presented no evidence regarding the specific mechanism of injury, as required in a claim for traumatic injury.[13] Appellant failed to identify what he was eating when the alleged injury occurred. He did not indicate whether he experienced pain when his teeth cracked, or describe the nature of the "hard surface" that caused his alleged injury.

[6] *Thelma S. Buffington*, 34 ECAB 104 (1982).

[7] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[8] *Joseph T. Gulla*, 36 ECAB 516 (1985).

[9] *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[10] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[11] *John W. Montoya*, 54 ECAB 306 (2003).

[12] *Judy C. Rogers*, 54 ECAB 693 (2003).

[13] *See Tracey P. Spillane*, 54 ECAB 608 (2003) (where an employee filed a claim alleging that she sustained an allergic reaction at work, but failed to clearly identify, or report to her physicians, the aspect of her employment which she believed caused the claimed condition, the Board held that she did not adequately specify the employment factors which caused her need for medical treatment; nor did she specify details such as the extent and duration of exposure to any given employment factors). *See also Betty J. Smith*, 54 ECAB 174 (2002).

The Board also notes that appellant submitted no medical evidence in support of his claim. He stated that he went to the medical clinic on base, from which he was taken downtown to the dental clinic in Abu Dhabi, and that he underwent oral surgery for crown-lengthening on "numbers 3-5" while he was deployed in the "UAE." However, appellant provided no evidence to support any such medical treatment, or that such treatment was causally related to the alleged February 3, 2007 incident. The Office advised him that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of his condition, but he failed to do so. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[14] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[15] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by a work-related incident is not determinative.

The Board finds that appellant has failed to establish the fact of injury: he did not submit sufficient evidence to establish that the alleged incident caused a diagnosed condition.

## ***CONCLUSION***

The Board finds that appellant has not met his burden of proof to establish that he sustained a traumatic injury while in the performance of duty on February 3, 2007.

[14] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[15] *Id.*

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the November 9, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 4, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board