

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

G.N., Appellant)

and)

**DEPARTMENT OF THE NAVY, MILITARY
SEALIFT COMMAND, Virginia Beach, VA,
Employer**)

**Docket No. 08-1162
Issued: September 11, 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
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 11, 2008 appellant filed a timely appeal from May 29, 2007 and February 19, 2008 decisions of the Office of Workers' Compensation Programs, denying his claim for an injury on April 6, 2007. 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 April 6, 2007 while in the performance of duty.

FACTUAL HISTORY

On April 16, 2007 appellant, then a 46-year-old able seaman, filed a traumatic injury claim alleging that he sustained a fractured nose, facial contusion, eye injury and left leg injury on April 6, 2007 when he was assaulted in a restroom by two men while undergoing training at the Merchant Marine Fire Academy in New Jersey. He was terminated from his job on April 13,

2007 for gross misconduct. An April 6, 2007 police report indicates that Michael Daly and Brian Kaczka alleged that appellant approached Mr. Kaczka in the restroom and began accusing him of calling appellant a “piece of shit” earlier in firefighting class.¹ Mr. Daly alleged that he tried to stop the argument but appellant struck him in the mouth. The police report noted a minor laceration on the left side of Mr. Daly’s mouth. Instructors entered the room and broke up the fight. Appellant alleged that he was in the restroom when one of the men called him “black.” Mr. Daly and Mr. Kaczka stated that they never called him “black.” They called him “Blanco,” which was the name he used in class. Appellant alleged that the two men jumped him, pushed his face into the wall, he fell to the ground and they began kicking him. He denied that he struck Mr. Daly.² Appellant filed a complaint against Mr. Kaczka, alleging assault, in a New Jersey court. The resolution of the complaint is not of record.

On April 26, 2007 the Office asked appellant to submit additional evidence within 30 days, including a full description of the events and circumstances leading up to the alleged assault on April 6, 2007, how the injury occurred and a medical report explaining how his medical conditions were causally related to the April 6, 2007 incident.

April 6, 2007 emergency room records from a New Jersey hospital indicated diagnoses of a fractured nose, facial contusion and a soft tissue contusion of appellant’s left leg.

By decision dated May 29, 2007, the Office denied appellant’s claim on the grounds that his injury on April 6, 2007 arose out of his willful misconduct and did not constitute an injury sustained while in the performance of duty.

April 21, 2007 emergency room records from a Louisiana hospital, appellant’s home state, indicated complaints of a headache, nausea, chest pain, abdominal pain and a “black spot” in his peripheral vision. He attributed these conditions to the April 6, 2007 assault at the fire training academy. A physician indicated that appellant’s headaches were due to an earlier concussion. The discharge diagnoses were postconcussion syndrome and atypical chest pain. Emergency room records dated April 28, 2007 indicated that appellant had a left knee abscess which he attributed to being kicked during the incident on April 6, 2007.

In a May 21, 2007 form report, Dr. Mary E. Hood, an attending optometrist who examined appellant on April 11, 2007, provided a history that he was attacked and struck in the right eye on April 4, 2007. She diagnosed a right corneal abrasion and prescribed eyedrops. Other nonwork-related eye conditions included hyperopia, astigmatism and presbyopia. Dr. Hood checked the block marked “no” in answer to the question as to whether the diagnosed conditions were caused or aggravated by appellant’s employment.

In a May 24, 2007 form report, Dr. Can N. Tran, an ophthalmologist, indicated that he examined appellant on April 18, 2007 for seeing “spots” in his right eye after being struck in his eye on April 4, 2007 while in New Jersey. He diagnosed a posterior vitreous detachment in the

¹ Mr. Kaczka alleged that during the firefighting class he was joking with appellant but there was a miscommunication because English is not appellant’s first language.

² At the hearing held in this case, appellant indicated that he might have struck Mr. Daly while pushing him away.

right eye. Dr. Tran checked the block marked “no” in answer to the question as to whether the diagnosed condition was caused or aggravated by appellant’s employment.

Appellant requested an oral hearing that was held on December 5, 2007.

By decision dated February 19, 2008, an Office hearing representative denied appellant’s claim on the grounds that the medical evidence failed to establish that his injuries were causally related to the April 6, 2007 employment incident. She affirmed the May 29, 2007 Office decision but insightfully modified it to reflect that the evidence did not establish that the April 6, 2007 incident arose out of appellant’s willful misconduct.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act³ has the burden to establish the essential elements of his 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, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether “fact of injury” has been established. There are two components involved in establishing fact of injury. 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.⁵ Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁶ An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.

To establish a causal relationship between a claimant’s condition, any attendant disability claimed and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician’s opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁷

³ 5 U.S.C. §§ 8101-8193.

⁴ *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Shirley A. Temple*, 48 ECAB 404 (1997).

⁷ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, *supra* note 6.

ANALYSIS

In its February 19, 2008 merit decision, the Office accepted that appellant experienced the claimed incident on April 6, 2007 but found that the medical evidence did not establish that he sustained an injury causally related to the incident.

Emergency room records dated the day of the incident, April 6, 2007, indicated diagnoses of a fractured nose, facial contusion and a soft tissue contusion of appellant's left leg. However, there was no rationalized medical opinion as to how these conditions were causally related to the April 6, 2007 work incident. Therefore, these records are not sufficient to establish that appellant sustained a medical condition as a result of the April 6, 2007 incident.

April 21, 2007 emergency room records indicated complaints of a headache, nausea, chest pain, abdominal pain and a "black spot" in appellant's peripheral vision and attributed these conditions to the April 6, 2007 work incident. A physician indicated that appellant's headaches were due to an earlier concussion. The discharge diagnoses were postconcussion syndrome and atypical chest pain. Emergency room records dated April 28, 2007 indicated that appellant had a left knee abscess which appellant attributed to being kicked during the April 6, 2007 work incident. These emergency room reports contain a description of appellant's symptoms, diagnoses and appellant's opinion that the conditions were caused by the April 6, 2007 fight. However, there is no physician's opinion in these records with a detailed description of the April 6, 2007 altercation and a rationalized explanation as to how the diagnosed conditions were causally related to the April 6, 2007 incident. Therefore, these hospital records are not sufficient to establish that appellant sustained a work-related medical condition on April 6, 2007.

Dr. Hood examined appellant on April 11, 2007 and provided a history that he was attacked and struck in the right eye on April 4, 2007. Her report is not based upon an accurate factual background as the altercation occurred on April 6, 2007. She diagnosed a right corneal abrasion, hyperopia, astigmatism and presbyopia and checked the block marked "no" in answer to the question as to whether the diagnosed conditions were caused or aggravated by appellant's employment. As Dr. Hood's opinion was that appellant's eye conditions were not causally related to the April 6, 2007 work incident, her report does not support his claim of a work-related injury on that date.

Dr. Tran examined appellant on April 18, 2007 for seeing "spots" after being struck in his right eye on April 6, 2007 while in New Jersey. He diagnosed a posterior vitreous detachment in the right eye and checked the block marked "no" in answer to the question as to whether the diagnosed conditions were caused or aggravated by appellant's employment. Because Dr. Tran indicated that appellant's eye condition was not causally related to the April 6, 2007 work incident, his report does not establish that he sustained an employment-related injury on that date.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an injury on April 6, 2007 while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 19, 2008 and May 29, 2007 are affirmed.

Issued: September 11, 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