United States Department of Labor
Employees' Compensation Appeals Board

B.H., Appellant	)	
and	)	**Docket No. 08-1902**
	)	**Issued: March 24, 2009**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Austin, TX, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 27, 2008 appellant filed a timely appeal from a June 3, 2008 decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that he sustained a left upper extremity injury or back injury in the performance of duty.

FACTUAL HISTORY

On April 15, 2008 appellant, then a 43-year-old mail clerk, filed a traumatic injury claim (Form CA-1) alleging that he injured his left arm, shoulder and back on March 28, 2008. He stated that "three months ago I really hard [sic] work all day busy" then experienced significant

pain while in the mail candling work area.[1] A supervisor stated that she was unaware of the alleged March 28, 2008 incident, noting that appellant had been upset recently by a proposed change in his job duties. Appellant stopped work on March 28, 2008.

In a May 2, 2008 letter, the Office advised appellant of the evidence needed to establish his claim. It noted that he did not submit enough evidence to establish that he injured himself at work on March 28, 2008.[2]

In a May 6, 2008 letter, Adriane A. Harbaugh, an employing establishment supervisor, stated that, on March 28, 2008, she advised appellant that he would join her extraction team on April 1, 2008. Appellant had been hired as an extractor but "had been spending time in his former area of Candling." He then told Cindy Holladay, a candling manager, that "he did not want to come to Extraction and was angry about it." On Monday April 1, 2008 appellant's wife telephoned Ms. Holladay, stating that he injured his shoulder over the weekend and would not report for work that day. Later that week, appellant's wife told Ms. Holladay that appellant injured himself at work on March 28, 2008. However, appellant did not inform Ms. Harbaugh of an injury on March 28, 2008.

In a May 6, 2008 letter, an employing establishment official noted that, on his claim form, appellant mentioned both that he was injured on March 28, 2008 and "three months ago." The official stated that three months prior to March 28, 2008, appellant was in furlough status and did not return to duty until the end of January 2008.

In a May 27, 2008 telephone memorandum, appellant related that, on March 28, 2008, he pulled a 200-pound cart, causing pain in his left arm and swelling in his left hand.

In reports dated April 3 to May 19, 2008, Dr. Jerald Head, an attending Board-certified anesthesiologist, related appellant's account of pushing carts at work on March 28, 2008. He diagnosed a left upper arm and shoulder strain and a left C7 disc herniation with increasing weakness in the left hand. However, Dr. Head commented that the diagnoses could not be attributed to a specific incident. In an April 18, 2008 note, Dr. Julie Hardy, an attending general practitioner, diagnosed left arm pain and recommended limited duty.

By decision dated June 3, 2008, the Office denied appellant's claim on the grounds that fact of injury was not established. It found that appellant had not established the March 28, 2008 work incident as factual. Also, Dr. Head opined that the specific cause of appellant's injuries could not be determined.

[1] Appellant self-identifies as Deaf and utilized interpreters and relay operators to communicate with the employing establishment and the Office.

[2] Appellant signed the Form CA-1011 an Office inquiry letter on May 19, 2008 but did not answer any of the questions provided.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

In order to determine whether an employee sustained a traumatic 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 that must be considered jointly. First, the employee must submit sufficient evidence to establish that he or she actually experienced the alleged employment incident.[6] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

ANALYSIS

On his April 15, 2008 claim form, appellant stated both that he injured his shoulder on March 28, 2008 and "three months ago." He did not identify pushing a cart until May 27, 2008. Ms. Harbaugh, an employing establishment supervisor, stated that appellant did not inform her on March 28, 2008 that he sustained an injury. Moreover, appellant's wife noted both that he injured his shoulder at home on March 29 or 30, 2008 and that he hurt himself at work on March 28, 2008. The Board finds that the conflicting accounts of events, coupled with a lack of factual corroboration, do not establish that he experienced the claimed employment incident at the time, place and in the manner alleged.[8] Appellant has failed to meet the first elements of his burden of proof.

The Office advised appellant by May 2, 2008 letter of the deficiencies in his claim and of the additional evidence needed. However, appellant did not submit such evidence. The Board finds that appellant has not met his burden of proof to establish the employment incident.[9]

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[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[6] *Gary J. Watling*, 52 ECAB 278 (2001).

[7] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[8] *Donna A. Lietz*, 57 ECAB 203 (2005).

[9] *M.W.*, 57 ECAB 710 (2006).

Therefore, appellant did not establish a *prima facie* claim for compensation benefits under the Act.[10]

The medical record demonstrates that appellant had a left arm and shoulder strain, as diagnosed by Dr. Head, an attending Board-certified anesthesiologist. The medical evidence is not probative as the factual evidence does not establish the claimed employment incident. For these reasons, the Board will affirm the denial of appellant's claim for compensation.[11]

CONCLUSION

The Board finds that appellant has not established that he sustained a left upper extremity or back injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 3, 2008 is affirmed.

Issued: March 24, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[10] *Frankie A. Farinacci*, 56 ECAB 723 (2005).

[11] *See supra* note 9.