

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

M.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Aspen Hill, MD, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 09-1593
Issued: April 6, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 8, 2009 appellant filed a timely appeal from the January 22, 2009 decision of the Office of Workers' Compensation Programs, which found that he did not sustain an injury in the performance of duty. 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 met his burden of proof to establish that he sustained a traumatic injury on July 11, 2007.

FACTUAL HISTORY

On December 3, 2008 appellant, then a 38-year-old letter carrier, filed a traumatic injury claim alleging that on July 11, 2007 he was in a motor vehicle accident and sustained injury to his back and neck. He did not stop work.

In a letter dated December 23, 2008, the Office requested additional factual and medical evidence from appellant. It explained that a physician's opinion was crucial to his claim and requested he submit evidence within 30 days. No additional evidence was received.

By decision dated January 22, 2009, the Office denied appellant's claim on the grounds that he did not establish an injury as alleged. It found that the evidence was sufficient to show that the claimed motor vehicle incident occurred as alleged; however, the Office found that there was no medical evidence to establish an injury related to the incident.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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 timely filed within the applicable time limitation period of the Act³ and that an injury was sustained in the performance of duty.⁴ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.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

Appellant alleged that he injured his back when he was involved in a motor vehicle accident while at work. There is no dispute that appellant was in the performance of duty when he was involved in the July 11, 2007 motor vehicle accident.

However, there is no medical evidence of record to establish that the employment incident caused an injury. The record does not contain any medical evidence providing a firm diagnosis, rationale or an explanation of the mechanism of injury regarding the employment

¹ Following the filing of this appeal on June 8, 2009, the Office issued a June 10, 2009 decision regarding the same issue that is before the Board. Consequently, the Office's June 10, 2009 decision is null and void as it pertains to the same issue over which the Board has jurisdiction. *See Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Id.*

incident of July 11, 2007.⁸ Appellant was advised by the Office to submit medical evidence in support of his claim but he failed to respond.

Appellant did not submit any medical evidence, which addressed how the July 11, 2007 incident caused or aggravated his claimed back injury. He has not submitted sufficient evidence to establish that the July 11, 2007 employment incident caused injury.⁹

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 6, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁸ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

⁹ The Board notes that subsequent to the Office's January 22, 2009 decision, appellant submitted additional evidence. The Board cannot consider new evidence on appeal. Appellant may submit the new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2); see 20 C.F.R. § 501.2(c).