

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

J.H., Appellant

and

**DEPARTMENT OF JUSTICE, ALCOHOL,
TOBACCO, FIREARMS & EXPLOSIVES,
Washington, DC, Employer**

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**Docket No. 09-2078
Issued: April 26, 2010**

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 August 12, 2009 appellant filed a timely appeal from a May 11, 2009 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 appellant's claim.

ISSUE

The issue is whether on March 26, 2009 appellant sustained an injury in the performance of duty.

FACTUAL HISTORY

On March 31, 2009 appellant, a 44-year-old group supervisor, filed a traumatic injury claim (Form CA-1) for injuries he sustained on March 26, 2009 when his government-assigned vehicle was struck by a landscaping truck as he was on his way to work.¹

Appellant submitted no evidence supporting his claim and by letter dated April 3, 2009, the Office notified him that the evidence of record was insufficient to support his claim. The Office advised him that he needed to submit evidence supporting his claim and provided examples of the type of evidence required.

Appellant submitted no additional evidence supporting his claim and by decision dated May 11, 2009, the Office denied the claim, finding that although the evidence of record established the employment incident occurred as alleged it did not establish that this incident caused a medically-diagnosed injury.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of proof to establish the essential elements of his claim by the weight of the evidence,³ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁴ As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment

¹ Appellant submitted additional evidence on appeal. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). See *J.T.*, 59 ECAB ___ (Docket No. 07-1898, issued January 7, 2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision).

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁶ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

incident at the time, place and in the manner alleged.⁷ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

ANALYSIS

The Office accepted that the March 26, 2009 incident occurred as alleged. Appellant submitted no medical evidence supporting his claim, and therefore the Board finds he has not satisfied his burden of proof to establish he sustained an injury in the performance of duty on March 26, 2009.

Appellant failed to meet his burden of proof to establish a *prima facie* claim for compensation. Although he submitted a statement which identified the factor of employment that he believed caused his condition, he failed to submit any medical evidence in support of his claim. The Office informed appellant of the need to submit a physician's opinion which explained how the claimed condition was related to the implicated employment factor. Appellant failed to submit any medical evidence in support of his claim.⁹

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.¹⁰ The Office notified appellant that he had not submitted sufficient evidence supporting his claim and advised him concerning the type of evidence required. Appellant did not submit sufficient evidence supporting his claim and, consequently, has not satisfied his burden of proof to establish that he sustained an injury in the performance of duty on March 26, 2009.

CONCLUSION

The Board finds appellant has not satisfied his burden of proof to establish that he sustained an injury in the performance of duty on March 26, 2009.

⁷ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁸ *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁹ *Donald W. Wenzel*, 56 ECAB 390 (2005); *Richard H. Weiss*, 47 ECAB 182 (1995).

¹⁰ *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

ORDER

IT IS HEREBY ORDERED THAT May 11, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 26, 2010
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