

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

N.C., Appellant)

and)

DEPARTMENT OF LABOR, JOB CORPS,)
Miami, FL, Employer)

**Docket No. 10-391
Issued: August 17, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 30, 2009 appellant filed a timely appeal from a September 5, 2009 merit 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, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an injury on July 19, 2009 in the performance of duty.

FACTUAL HISTORY

On July 22, 2009 appellant, then an 18-year-old job corps apprentice, filed a claim alleging that he sustained facial trauma on July 19, 2009 when he was assaulted by another student. He did not stop work. The employing establishment did not controvert the claim but noted that appellant did not lose time and did not have medical expenses.

The record indicates that appellant received a prescription on July 21, 2009.

By letter dated July 23, 2009, the Office advised appellant that the evidence was insufficient to establish that he sustained an injury as alleged. It requested that he submit supporting medical evidence, including a detailed report from his attending physician containing a rationalized opinion regarding how his injury was caused or aggravated by the claimed work incident.¹

In a decision dated September 5, 2009, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that he sustained a medical condition due to the July 19, 2009 work incident. It noted that the employment incident was not controverted and accepted that it occurred as alleged. The Office found, however, that there was no supporting medical evidence.

On appeal appellant argues that it took him time to get the medical information to submit to the Office and that he could not obtain all the requested information.

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 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.³ 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.⁴

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁶ An employee may establish that the employment

¹ The Office mailed the July 23, 2009 letter to appellant's address of record but it was returned to sender. On August 11, 2009 it mailed a copy of the letter to the employing establishment to provide to appellant.

² 5 U.S.C. §§ 8101-8193.

³ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁴ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁷

ANALYSIS

Appellant alleged that he sustained facial trauma on July 19, 2009 when he was assaulted by another student. The employing establishment did not controvert the claim and the Office accepted that the incident occurred at the time, place and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that appellant sustained an injury as a result of this incident.

The Board finds that appellant has not established that the July 19, 2009 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.⁸ On July 23, 2009 the Office advised appellant of the medical evidence required to establish his claim. Appellant did not, however, provide the medical evidence necessary to meet his burden of proof. The record contains a prescription note but the note contains no diagnosis or finding regarding causal relationship from a physician. As appellant did not provide the medical evidence necessary to substantiate his claim, he has not met his burden of proof.⁹ The Office, therefore, properly denied his claim for compensation.¹⁰

On appeal appellant noted that it took more time than allowed to gain access to the medical information. He submitted new evidence on appeal. The Board may not review evidence for the first time on appeal.¹¹ This decision, however, does not preclude appellant from requesting reconsideration by the Office based on the newly submitted medical evidence pursuant to 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that appellant has not established that he sustained an injury on July 19, 2009 in the performance of duty.

⁷ *Id.*

⁸ *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

⁹ *See Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹⁰ The Board notes that the Office issued a January 13, 2010 nonmerit decision denying appellant's request for a hearing as untimely under 5 U.S.C. § 8124. As this decision was issued after he filed his appeal with the Board on November 30, 2009, it is null and void. *See Douglas E. Billings*, 41 ECAB 880 (1990); *Oren E. Beck*, 33 ECAB 1551 (1982).

¹¹ *See* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 17, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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