

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

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**J.M., Appellant**

**and**

**DEPARTMENT OF THE AIR FORCE,  
San Pedro, CA, Employer**

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**Docket No. 09-1483  
Issued: January 25, 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  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 26, 2009 appellant filed a timely appeal from a November 25, 2008 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 appellant's claim.

**ISSUE**

The issue is whether appellant satisfied his burden of proof to establish that he sustained an injury in the performance of duty on October 2, 2008.

**FACTUAL HISTORY**

On October 17, 2008 appellant, a 35-year-old police officer, filed a traumatic injury claim (Form CA-1) for "possible exposure" to the hepatitis C virus. He alleged that on October 2, 2008, while applying handcuffs, he was exposed to the blood of an individual who told him that he was infected with the hepatitis C virus. Appellant's claim form contained a witness statement, signed by Officer Smith, who stated that he saw appellant searching and handling the belongings of a "possible hepatitis C suspect" on the date in question.

In a letter dated October 24, 2008, the Office informed appellant that the information submitted was insufficient to establish his claim. It advised him to provide a medical narrative, which contained a diagnosis and an explanation as to how the diagnosed condition was causally related to the claimed event.

Appellant was treated by Dr. Ashkan Naraghi, a treating physician. On October 17, 2008 Dr. Naraghi provided a history of injury reflecting that appellant had contact with the blood of a “possible hepatitis C suspect and drug user, while he was applying handcuffs during an arrest on October 2, 2008.” Appellant had washed his hands thoroughly and was “doing fine,” except for a respiratory infection, which was resolving. The form contains the notation, “hepatitis, unspecified.” In a separate report of the same date, Dr. Naraghi repeated his history of injury and diagnosed “exposure to potentially hazardous bodily fluids.” In follow-up reports dated October 22 and 24, 2008, he again diagnosed “exposure to potentially hazardous bodily fluids.”

By decision dated November 25, 2008, the Office denied appellant’s claim because the evidence he submitted was insufficient to establish that he sustained an injury as defined by the Federal Employees’ Compensation Act. The Office found the medical evidence of record insufficient, as it did not contain a definitive diagnosis that could be causally related to the established October 2, 2008 incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act<sup>1</sup> has the burden of establishing 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 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. 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.<sup>2</sup>

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. 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.<sup>3</sup>

Section 10.303(a) of the Office regulations provides that simple exposure to a workplace hazard, such as an infectious agent, does not constitute an injury entitling an employee to medical treatment under the Act unless the employee has sustained an identifiable injury or

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *S.P.*, 59 ECAB \_\_\_\_ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>3</sup> *Id.*

medical condition as a result of that exposure.<sup>4</sup> Section 10.313(b) provides that the Office can authorize treatment where there is actual or probable exposure to a known contaminant due to an injury, requiring disease specific measures against the infection.<sup>5</sup> The Office procedure manual addresses high-risk employment, notes that certain kinds of employment routinely present situations, which may lead to infection by contact with animals, human blood, bodily secretions and other substances. Conditions such as HIV (human immunodeficiency virus) infection and hepatitis B more commonly represent a work hazard in health care facilities, correctional institutions and drug treatment centers, among others, than in federal workplaces as a whole. For claims based on transmission of a communicable disease where the means of transmission and the incubation period are medically feasible, the Office should, if the source of infection is a known or probable carrier of the disease, accept the case for the physical injury involved and authorize prophylactic treatment.<sup>6</sup>

The Office procedure manual provides that the Act does not authorize preventive measures such as vaccines and inoculations and, in general, preventive treatment is the responsibility of the employing establishment except that preventive care can be authorized by the Office for complications of preventive measures which are provided or sponsored by the agency, such as adverse reaction to prophylactic immunization and/or an injury involving actual or probable exposure to a known contaminant.<sup>7</sup>

### ANALYSIS

The Office accepted that on October 2, 2008 appellant was exposed to the blood of an individual who may have been infected with the hepatitis C virus. However, the medical evidence does not establish that the exposure caused or aggravated an injury or illness.

Dr. Naraghi stated that appellant had contact with the blood of a “possible hepatitis C suspect and drug user, while he was applying handcuffs during an arrest on October 2, 2008.” Although he described the work incident and assessed “exposure to potentially hazardous bodily fluids,” he did not address whether appellant’s exposure caused or aggravated a diagnosed

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<sup>4</sup> 20 C.F.R. § 10.303(a). This regulation at section (b) provides:

“Employers may be required under other statutes or regulations to provide their employees with medical testing and/or services in situations described in paragraph (a) of this section. For example, regulations issued by the Occupational Safety and Health Administration at 29 C.F.R. Chapter XVII require employers to provide their employees with medical consultations and/or examinations when they either exhibit symptoms consistent with exposure to a workplace hazard, or when an identifiable event such as a spill, leak or explosion occurs and results in the likelihood of exposure to a workplace hazard.”

<sup>5</sup> *Id.* at § 10.313(b).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.8 (October 1995).

<sup>7</sup> *Id.* at Chapter 3.400.7 (April 1992).

medical condition.<sup>8</sup> Appellant also does not assert that the exposure to his blood caused any specific injury or illness. Consequently, the medical evidence does not support that the October 2, 2008 exposure caused an injury.

The Office's regulations provide that simple exposure to a workplace hazard, such as an infectious agent, does not constitute a work-related injury entitling an employee to medical treatment under the Act unless the employee has sustained an identifiable injury or medical condition as a result of that exposure.<sup>9</sup> In this case, there is no identifiable injury or medical condition that appellant sustained as a result of his exposure. This is also not a case where appellant worked in the type of employment, such as a health care facility, correctional institution, or drug treatment facility, which could routinely present a situation that could lead to infection by contact with animals, human blood, bodily secretions or other substances.<sup>10</sup> Furthermore, this is not a case where there was a known contaminant.<sup>11</sup> The medical evidence is insufficient to establish that appellant sustained an identifiable and compensable injury, or that he was otherwise entitled to reimbursement for his medical expenses under Office regulations or procedures.

### CONCLUSION

The Board finds that appellant has not satisfied his burden of proof to establish that he sustained an injury in the performance of duty on October 2, 2008.

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<sup>8</sup> *S.E.*, 60 ECAB \_\_\_\_ (Docket No. 08-2214, issued May 6, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

The Board notes that Dr. Naraghi diagnosed an upper respiratory infection, which he did not relate to appellant's exposure to hepatitis C.

<sup>9</sup> *See supra* note 3. *See also B.A.*, Docket No. 08-1542 (issued February 11, 2009). *Compare Joseph Kripp*, 55 ECAB 121 (2003).

<sup>10</sup> *See supra* notes 5 and 6. *See also J.F.*, 61 ECAB \_\_\_\_ (Docket No. 09-1061, issued November 17, 2009); *N.S.*, Docket No. 09-1652 (March 18, 2008).

<sup>11</sup> *See supra* notes 5 and 6. The Board notes that the record does not contain conclusive evidence, such as test results, that the blood to which appellant was exposed was infected with hepatitis C.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 25, 2008 decision of the Office of Workers' Compensation Programs is affirmed.<sup>12</sup>

Issued: January 25, 2010  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>12</sup> The Board notes that appellant submitted additional evidence after the Office rendered its November 18, 2005 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).