

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

B.G., Appellant

and

**DEPARTMENT OF JUSTICE, BUREAU OF
ALCOHOL, TOBACCO & FIREARMS,
Falls Church, VA, Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 09-1663
Issued: March 1, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 23, 2009 appellant filed a timely appeal from October 6, 2008 and June 12, 2009 merit decisions 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 August 5, 2008 in the performance of duty.

FACTUAL HISTORY

On August 29, 2008 appellant, then a 44-year-old special agent, filed a claim alleging that he sustained probable food poisoning on August 5, 2008 in the performance of duty. He related that, while on official travel status in New Jersey, he became ill with what he "now believed was food poisoning from a restaurant...." After eating dinner in the restaurant on

August 5, 2008, appellant awoke at midnight with severe nausea. He “began vomiting profusely, including blood.”

By letter dated September 3, 2008, the Office requested that appellant submit medical evidence in support of his claim, including a report from a physician explaining how the identified work incident caused or aggravated the claimed condition.

In a decision dated October 6, 2008, the Office denied the claim finding that appellant failed to submit medical evidence supporting that he sustained an injury due to the established work factor.

In a statement dated October 22, 2008, a supervisor related that appellant was on travel status when he became ill. Appellant received treatment at the emergency room. He submitted an October 22, 2008 statement and related that he became ill while on official travel. Appellant stated:

“In short, I was on official travel in Trenton/Princeton, NJ [New Jersey], when I took ill while in my hotel room. I awoke around midnight vomiting blood. I believed I might have swallowed something at dinner, possibly a broken toothpick (part of which I found in some iced tea I had been drinking). I went to the local emergency room to get evaluated.”

In a hospital report dated August 5, 2008, received by the Office on October 28, 2008, Dr. Daniel Farber, Board-certified in emergency medicine, evaluated appellant for possible ingestion of a toothpick six hours prior. Appellant provided a history of eating dinner in a chain restaurant that evening and indicated that he had no prior symptoms or exposure to illness. He related that he had been vomiting blood. Dr. Farber noted that a reading of x-rays was unremarkable.¹ A nurse indicated that appellant left the hospital without discharge instructions or signing discharge paperwork.

On March 9, 2009 appellant requested reconsideration. In a decision dated June 12, 2009, the Office denied modification of its October 6, 2008 decision. It noted that he had not submitted a medical report providing a firm diagnosis of a condition.

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 Where an employee is

¹ X-rays obtained on August 5, 2008 revealed no radiodense foreign bodies.

² 5 U.S.C. §§ 8101-8193.

³ *Anthony P. Silva*, 55 ECAB 179 (2003).

on temporary-duty assignment away from his federal employment, he is covered by the Act 24 hours a day with respect to any injury that results from activities essential or incidental to his temporary assignment.⁴

The Board has recognized that Larson, in his treatise, *The Law of Workers' Compensation*, sets forth the general criteria for performance of duty as it relates to travel employees or employees on temporary-duty assignments as follows:

“Employees whose work entails travel away from the employer’s premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown. Thus, injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable.”⁵

It is not sufficient, however, simply to show that an employee is on a special mission or in travel status during the time a disabling condition manifests itself.⁶ The medical evidence must establish an injury causally related to activities incidental to the travel assignment.⁷

ANALYSIS

Appellant alleged that he became ill with food poisoning while on travel status. As noted, while on travel status he is covered 24 hours a day with respect to any injury that results from activities incidental to these duties.⁸ The employing establishment confirmed that he was on travel status and in the performance of duty at the time of the alleged employment incident on August 5, 2008. Appellant, therefore, would be covered from any injury established as resulting from employment factors while on official travel.

In order to establish that he sustained an injury on August 5, 2008, appellant must submit medical evidence on causal relationship between a diagnosed condition and an incident of his travel.⁹ On August 5, 2008 Dr. Farber evaluated appellant at the hospital for the possible ingestion of a toothpick. He noted that appellant had eaten at a chain restaurant. Appellant related that he had no exposure to illness or prior symptoms. Dr. Farber reviewed x-rays, which were unremarkable for a foreign body. A nurse related that appellant left the hospital without signing paperwork or receiving discharge instruction. Dr. Farber did not provide a diagnosis or address the cause of appellant’s condition or its relationship to incidents of his travel. Without a firm diagnosis or opinion on causal relationship supported by medical rationale, the report is of

⁴ See *Susan A. Filkins*, 57 ECAB 630 (2006); *Cherie L. Hutchings*, 39 ECAB 639 (1988).

⁵ A. Larson, *The Law of Workers' Compensation*, § 25.01 (2000); see also *Susan A. Filkin*, *supra* note 4; *Lawrence J. Kolodzi*, 44 ECAB 818 (1993).

⁶ See *Susan A. Filkins*, *supra* note 4; *William B. Merrill*, 24 ECAB 215, 219 (1973).

⁷ *Id.*

⁸ *Susan A. Filkins*, *supra* note 4.

⁹ *Id.*

little diminished value.¹⁰ Dr. Farber did not explain how appellant's condition was causally related to activities essential to or incidental to his temporary assignment and his opinion is insufficient to establish causal relationship. In the absence of probative medical evidence, the Board finds that appellant did not meet his burden of proof.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury on August 5, 2008 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 12, 2009 and October 6, 2008 are affirmed.

Issued: March 1, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

¹⁰ See *Conard Hightower*, 54 ECAB 796 (2003) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship); *Samuel Senkow*, 50 ECAB 370 (1999) (finding that, because a physician's opinion of Legionnaires disease was not definite and was unsupported by medical rationale, it was insufficient to establish causal relationship).