

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

<p>D.W., Appellant</p>)	
)	
and)	Docket No. 10-813
)	Issued: November 3, 2010
<p>DEPARTMENT OF THE INTERIOR, DRY TORTUGAS NATIONAL PARK, Key West, FL, Employer</p>)	
)	

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 1, 2010 appellant filed a timely appeal from an August 14, 2009 merit decision of the Office of Workers’ Compensation Programs. 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 established that he sustained an injury on May 7, 2009 in the performance of duty, as alleged. On appeal, appellant requests that the Office pay outstanding medical bills for medical services rendered on May 8 and 9, 2009.

FACTUAL HISTORY

On July 1, 2009 appellant, then a 55-year-old supervisory ranger and site manager, filed a traumatic injury claim (Form CA-1) alleging that on May 7, 2009 he injured himself on a 27-foot vessel called “the Parker.” He alleged that choppy water conditions caused the vessel to rise and fall between two and three feet, throwing him off balance. Appellant fell onto his left hand. He

noted pain, swelling and numbness in his left hand and wrist, as well as an infection due to the infiltration of bird excrement in an approximately two-inch cut along the palm of his left hand.

Appellant's supervisor advised on the claim form that appellant did not stop work following the incident. The employing establishment expected medical expenses to result, noting that the form would be forwarded to the Office.

On May 8, 2009 the employing establishment signed an authorization for examination and/or treatment (Form CA-16) for Lower Keys Medical Center to provide appellant with medical services for a "hand injury" for a period of up to 60 days.

On an initial assessment form dated May 8, 2009, Dr. Donald Dixon, Board-certified in emergency medicine, reported that appellant fell on May 7, 2009 while on a boat and injured his left hand on a steel grill covered in bird excrement. He ordered a radiologic examination of appellant's left hand and diagnosed a moderate to severe hand injury due to puncture, indicating his medical impression that there was soft tissue swelling but no evidence of acute fracture, dislocation or intrinsic bony abnormality.

In a progress report dated May 9, 2009, Dr. Dixon rechecked appellant's laceration during a follow-up examination and reported that appellant's skin had a healing wound that looked "better and less swollen."

On July 7, 2009 the Office requested submission of medical records pertaining to the treatment of appellant's alleged injury. In response to the Office's request, appellant submitted a conditions of treatment and admission form dated May 8, 2009, admissions record forms dated May 8 and 9, 2009 and a radiology report dated May 8, 2009.

By decision dated August 14, 2009, the Office denied the claim for compensation. It found that, although the evidence supported that the May 7, 2009 incident occurred as alleged, the medical evidence did not provide a diagnosis which could be connected to the incident and, therefore, was not sufficient to establish that appellant sustained injury to his left hand.

LEGAL PRECEDENT

An employee seeking benefits under the Act¹ 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 Act,² and that an injury was sustained in the performance of duty.³ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

¹ 5 U.S.C. §§ 8101-8193.

² *Ellen L. Noble*, 55 ECAB 530 (2004).

³ *Id.*

⁴ *Id.*

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. A fact of injury determination is based on two elements. 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.⁵ 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.⁶

In cases of traumatic injury, the injury must result from a specific employment incident. If the medical evidence is insufficient to establish that the employment incident caused an “injury” within the meaning of the Act,⁷ then the Office cannot accept fact of injury.⁸ The medical and factual evidence required to establish fact of injury is determined on a case-by-case basis.⁹

In cases where there is no dispute that the incident occurred as alleged and the injury is “readily apparent, *i.e.*, amputation, laceration, abrasion, bruise, swelling, *etc.* ... the Office may determine that minimal evidence is required to establish fact of injury.”¹⁰ Office procedures state: “In clear-cut traumatic injury claims, where the fact of injury is established and is clearly competent to cause the condition described (for instance, a worker falls from a scaffold and breaks an arm), no opinion is needed. The physician’s affirmative statement is sufficient to accept the claim.”¹¹ All other types of traumatic injury claims must be supported by rationalized medical opinion evidence.¹²

ANALYSIS

There is no dispute that the employment incident occurred on May 7, 2009 as alleged. Appellant fell on his left hand on choppy water sustaining a cut in his left palm. Therefore, the issue in the instant case is whether appellant has submitted medical evidence sufficient to establish that the employment incident caused an injury.

⁵ *Id.*

⁶ *Id.* See 20 C.F.R. § 10.5(ee) which defines traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift.

⁷ 20 C.F.R. § 10.5(a)(14).

⁸ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(2) (June 1995).

¹² *Id.* at Chapter 2.805.3(d)(3). Compare *Jennifer Atkerson*, 55 ECAB 317 (2004). See also *Deborah L. Beatty*, 54 ECAB 340 (2003).

Appellant sought medical treatment immediately after the incident at Lower Keys Medical Center as authorized by the employing establishment.¹³ The initial assessment of May 8, 2009 by Dr. Dixon indicated that while on a boat appellant fell on his left hand on a steel grill covered with bird excrement. The radiologic examination revealed that appellant's left hand sustained a moderate to severe injury due to a puncture wound. Dr. Dixon reported soft tissue swelling. In a May 9, 2009 progress report, he reported that he reexamined appellant's laceration and noted a "healing wound" on the skin of appellant's left hand.

As noted, the Office's procedure manual provides that certain clear-cut traumatic injury claims may not require rationalized medical opinion evidence to the fullest extent. The Board finds that appellant's left hand was lacerated and visibly swollen immediately following the May 7, 2009 employment incident. Soft tissue swelling was indicated on the radiologic examination and Dr. Dixon made an affirmative statement that appellant sustained a moderate to severe hand injury due to puncture. This evidence is sufficient to meet appellant's burden of proving that he sustained an injury to his left hand.¹⁴

On appeal, appellant requested payment of a medical bill for services rendered on May 8 and 9, 2009. The Board finds that appellant is entitled to reimbursement of expenses incurred for medical treatment for the period May 8, 2009, the date the employing establishment signed the Form CA-16, authorization for examination and/or treatment, to May 9, 2009, as it was within 60 days from the official's signature.

By Form CA-16, authorization for examination and/or treatment, signed by an employing establishment official on May 8, 2009 the employing establishment authorized Lower Keys Medical Center to provide medical care for a period of up to 60 days to "[f]urnish office and/or hospital treatment as medically necessary for the effects of the injury." By letter decision dated August 14, 2009, the Office indicated that it was terminating any prior authorization for treatment. The authorization from the employing establishment "created a contractual obligation to pay for the cost of necessary medical treatment and emergency surgery regardless of the action taken on the claim."¹⁵ Therefore, appellant is entitled to payment of expenses incurred for necessary medical treatment for the effects of his May 7, 2009 hand injury for a period of up to 60 days from May 8, 2009.

CONCLUSION

The Board finds that appellant has established that he sustained an injury to his left hand in the performance of duty on May 7, 2009, as alleged. The case is returned to the Office for payment of appellant's medical expenses related to his treatment on May 8 and 9, 2009.

¹³ A statement from appellant in the record notes that it took him nearly 30 hours to reach the medical facility.

¹⁴ See *A.S.*, Docket No. 06-1244 (issued September 13, 2006).

¹⁵ *Robert F. Hamilton*, 41 ECAB 431 (1990). See 20 C.F.R. § 10.300.

ORDER

IT IS HEREBY ORDERED THAT the August 14, 2009 decision of the Office of Workers' Compensation Programs be reversed. The case is remanded for action consistent with this decision.

Issued: November 3, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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