United States Department of Labor
Employees' Compensation Appeals Board

R.L., Appellant	)	
and	)	**Docket No. 10-991**
	)	**Issued: January 6, 2011**
DEPARTMENT OF THE ARMY, U.S. ARMY MATERIEL COMMAND, Corpus Christi, TX, Employer	)	

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 26, 2010 appellant filed a timely appeal from a November 25, 2009 decision of the Office of Workers' Compensation Programs. Under 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 is a federal employee within the meaning of the Federal Employees' Compensation Act for purposes of receiving compensation for an alleged Agent Orange condition.

FACTUAL HISTORY

Appellant, a 57-year-old laborer employed by Page Airways, filed a Form CA-2 claim for benefits on August 20, 2009, alleging that he developed an Agent Orange condition caused by exposure to irritants from helicopters that were sent to his employer from the Corpus Christi Army Depot. He became aware of his latent condition and the causal relationship to his employment duties on August 20, 2008. Appellant noted that he had diabetes with high blood

pressure and cholesterol. He saw a local television program on which several individuals stated that they were exposed to Agent Orange at the Corpus Christi Army Depot by being exposed to helicopters which were dirty and had been used in Vietnam.

In a supplemental statement, appellant explained that he had worked for Page Airways Incorporated at Cuddy Hayfield in Corpus Christi, Texas. The airway was subcontracted by Corpus Christi Army Depot to receive disassembled helicopter parts for oiling, greasing and painting. He explained: "[w]e use to receive helicopters coming from Vietnam, they were all dirty and disassembled. We took all parts out and oiled and greased them up, then we would wrap them up with a brown wax paper and tie all the parts inside, next we could cover the windows with a special white paper and tape the paper to the helicopter body and paint over the tape with a rubberized paint, then we would send the helicopters to the Corpus Christi Army Depot to be overhauled." Appellant noted that he would sandblast helicopter engine containers and repaint them.

By letter dated September 10, 2009, the Office advised appellant that it required additional evidence to determine whether he was eligible for compensation benefits. It informed him that the information of record was not sufficient to determine whether he was eligible for benefits under the Act because it did not appear that he was a federal employee at the time of his alleged exposure. The fact that he worked at the Corpus Christi Army Depot did not bring him within coverage under the Act if he was not employed by the United States at the time. The Office asked appellant to provide copies of employment contracts, letters, personnel records or other documents to establish his employer while he was employed with Page Airways.

Appellant submitted reports from April 2003 which documented his complaints of abdominal pain. A June 25, 2007 decision from the Social Security Administration awarded him disability compensation. In reports dated November 25, 2008 and August 4, 2009, appellant underwent magnetic resonance imaging (MRI) testing for his low back and neck. In an October 8, 2009 bulletin, the Department of Veterans Affairs outlined the symptoms and conditions pertaining to Agent Orange. A September 8, 2009 pathology report diagnosed diminutive tubular adenoma. Appellant also submitted a DVD interview of William S. Dill, who discussed the condition of the helicopters returned from Vietnam.

By decision dated November 25, 2009, the Office denied appellant's claim. It found that he was not eligible for compensation because he was not an "employee" for the purpose of coverage under the Act.

LEGAL PRECEDENT

An employee seeking benefits under the Act[1] has the burden of establishing that 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, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are

[1] 5 U.S.C. §§ 8101-8193.

causally related to the employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

Section 5 U.S.C. § 8101(1) of the Act defines a federal employee as "a civil officer or employee in any branch of the Government of the United States, including an officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance of use of the service, or authorizes payment of travel or other expenses of the individual."

20 C.F.R. § 10.5(h)(1)-(2) of the implementing regulations define a federal employee as:

> "(1) A civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States;
>
> "(2) An individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the use of the service, or authorizes payment of travel or other expenses of the individual."

The Board has held that the question of whether a person is an employee of the United States or an employee of an independent contractor is ultimately a question of fact to be decided on an individual basis in the particular case. Among the factors to be considered in resolving this issue, the most important is the question of the right to control the work activities of the one whose status is under consideration. Other factors include the nature of the work performed, the right to hire and fire, who was the beneficiary of the services, who had supervision and control of the work, the intention of the parties, and the method of payment for the work including the identity of the party who paid the wages.[4]

ANALYSIS

Appellant alleged injury due to exposure to substances or irritants from helicopter parts on which he worked. The Board finds that he has not submitted sufficient evidence to establish that he is an "employee of the United States" within the meaning of the Act.

Appellant noted that he worked for a private company, Page Airways, which was a subcontractor to the Department of the Army and bore no other affiliation with the Federal Government. He has not submitted evidence to establish that he was employed by the Federal Government pursuant to any of the criteria noted above. Appellant did not work for the Federal Government pursuant to a statute which authorizes the acceptance of the use of his services; did not render personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, under a statute which authorizes the

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *Funnia F. Hightower*, 28 ECAB 83 (1976).

acceptance or use of such service, or authorizes payment of travel or other expenses. Furthermore, there is no evidence of record that the Federal Government hired appellant for work at Page Airways, controlled or supervised his work activities or compensated him for his work.

On appeal, appellant contends that he worked on government-owned aircraft at Page Airways. The fact remains that his employer was Page Airways. For any injury sustained due to appellant's work at Page Airways, his redress is with that employer.

Appellant has not established that he is a federal employee for the purpose of coverage under the Act and is not entitled to compensation. The Board will affirm the Office's November 25, 2009 decision.

CONCLUSION

The Board finds that appellant failed to establish that he was a federal employee within the meaning of the Act for purposes of receiving compensation.

ORDER

IT IS HEREBY ORDERED THAT the November 25, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2011
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