

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

D.A., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS HEALTH ADMINISTRATION,)
Seattle, WA, Employer)

Docket No. 10-2112
Issued: May 11, 2011

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 17, 2010 appellant filed a timely appeal from a June 28, 2010 merit decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act¹ and 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 met his burden of proof to establish that he sustained an injury in the performance of duty on May 23, 2010.

FACTUAL HISTORY

On May 25, 2010 appellant, then a 55-year-old diagnostic radiologic technologist, filed a traumatic injury claim (Form CA-1) alleging that on May 23, 2010 he sustained left hand dorsal

¹ 5 U.S.C. § 8101 *et seq.*

surface injury with burning pain and swelling when he was on the code green team and strained his hand when restraining a patient. He stated that his left hand started to burn and the pain became worse over time. Appellant noted that witness statements were forthcoming. On the reverse side of the form, the employing establishment indicated that the injury did not occur in the performance of duty because appellant responded to a code green alert but was not part of that team.

By letter dated May 26, 2010, the Office informed appellant that no evidence had been received in support of his claim. It requested additional factual and medical evidence and asked that he respond to the provided questions within 30 days.

By decision dated June 28, 2010, the Office denied appellant's claim finding that the evidence did not establish that the incident occurred as alleged. It specifically noted that he did not submit any evidence in support of his claim.²

LEGAL PRECEDENT

An employee seeking benefits under the Act³ 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 period of the Act⁴ and that an injury was sustained in the performance of duty.⁵ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

When an employee claims that he or she sustained an injury in the performance of duty they must submit sufficient evidence to establish that they experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.⁷ Once an employee establishes that he or sustained an injury in the performance of duty, they have the burden of proof to establish that

² The Board notes that appellant submitted additional evidence after the Office rendered its June 28, 2010 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. § 10.510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to the Office, together with a request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *James E. Chadden Sr.*, 40 ECAB 312 (1988).

⁶ *Delores C. Ellyet*, 41 ECAB 992 (1990).

⁷ See generally *John J. Carlone*, 41 ECAB 354 (1989); see also 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). See *Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

any subsequent medical condition or disability for work, for which he or she claims compensation is causally related to the accepted injury.⁸

ANALYSIS

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on May 23, 2010.

Appellant must establish all of the elements of his claim for his injury to be compensable. He must prove his employment, the time, place and manner of injury, a resulting personal injury and that his injury arose in the performance of duty. The evidence received prior to the June 28, 2010 decision does not provide any details regarding appellant's injury. Appellant submitted a claim form which simply recounted the alleged incident, that he strained his left hand when restraining a patient on the code green team. He also reported that signed witness statements were forthcoming. By letter dated May 26, 2010, the Office informed appellant of detailed medical and factual evidence needed to support his claim and provided him with a series of questions; however, the record before the Board contains no evidence.

While the employing establishment controverted the claim alleging that appellant was not in the performance of duty, appellant has not supported this claim in the first instance. The Board need not consider this assertion.

Appellant has not provided the sufficient detail needed to establish that the incident occurred in the manner alleged. He failed to adequately describe the circumstances of his injury, did not explain what the code green team was, or where he was when the incident occurred. Appellant failed to present evidence regarding the specific mechanism of injury, as required in a claim for traumatic injury.⁹ No witness statements were submitted and he did not provide the Office with the additional factual evidence requested. Appellant did not submit any medical evidence in support of his claim prior to the June 28, 2010 decision. Further, the employing establishment controverted the claim indicating that the injury did not occur in the performance of duty because he was not part of the code green team. As appellant failed to provide evidence to establish that the incident occurred at the time, place and in the manner alleged, his claim was properly denied.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on May 23, 2010.

⁸ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁹ *Paul Foster*, 56 ECAB 1943 (2004).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated June 28, 2010 is affirmed.

Issued: May 11, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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