

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

C.G., Appellant

and

**DEPARTMENT OF STATE, Washington, DC,
Employer**

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**Docket No. 13-292
Issued: April 2, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 19, 2012 appellant filed a timely appeal from the August 6, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on November 17, 2011.

¹ 5 U.S.C. §§ 8101-8193.

² The Board notes that, following the issuance of the August 6, 2012 OWCP decision, appellant submitted new evidence. However, the Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On December 3, 2011 appellant, then a 70-year-old driver, filed a traumatic injury claim alleging that he sustained a medical condition on November 17, 2011 when he was sitting in a car and was exposed to fumes from the defroster, which caused him headaches and dizziness. He stopped work on November 18, 2011 and returned to work on May 29, 2012.

In support of the claim, OWCP received a witness statement from a coworker dated May 14, 2012. She related that she saw appellant leaning over a car door in November 2011 and that he described to her how he had inhaled fumes from the car.

By letter dated June 29, 2012, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed to establish the claim. He was advised that the record would be held open for 30 days for the submission of further evidence. OWCP received no additional evidence within 30 days.

By decision dated August 6, 2012, OWCP accepted that the alleged incident occurred as alleged, but denied the claim on the grounds that the medical evidence was insufficient to establish that he sustained an injury in connection with the November 17, 2011 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence⁴ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.⁶ There are two components involved in establishing the fact of injury. 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.⁷ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁸

³ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁵ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁶ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.

ANALYSIS

OWCP has accepted that the incident occurred as alleged; appellant was exposed to car fumes on November 17, 2011. The Board finds that appellant failed to meet his burden of proof to establish that he sustained an injury on November 17, 2011.

Appellant has the burden to submit a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition, medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed, and medical evidence establishing that the diagnosed condition is causally related to the implicated employment factors. The Board finds that appellant failed to submit any medical evidence which provides a firm diagnosis and provides medical explanation of the causal relationship between the diagnosed condition and the accepted incident.

Although OWCP informed appellant of the deficiencies in the evidence, he did not submit any medical evidence to establish his claim. Appellant did not meet his burden of proof to establish that he sustained an employment-related injury on November 17, 2011.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an injury in the performance of duty on November 17, 2011.

⁹ *James Mack*, 43 ECAB 321 (1991).

ORDER

IT IS HEREBY ORDERED THAT the August 6, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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