

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES E. COLQUITT and DEPARTMENT OF THE ARMY,
ANNISTON ARMY DEPOT, Anniston, AL

*Docket No. 02-1009; Submitted on the Record;
Issued February 5, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established an injury in the performance of duty on July 26, 2000.

On January 24, 2001 appellant filed a notice of traumatic injury alleging that on July 26, 2000 he fell while in the performance of duty. He stated on the claim form that his head struck a steel table.

By decision dated March 15, 2001, the Office of Workers' Compensation Programs denied the claim, finding that appellant had not established an employment incident as alleged on July 26, 2000. In a decision dated January 2, 2002, the Office reviewed the case on its merits and denied modification.

The Board finds that appellant has established fact of injury in this case.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that he or she sustained an injury while in the performance of duty.² In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.³

¹ 5 U.S.C. §§ 8101-8193.

² *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

³ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

The Office denied the claim on the grounds that appellant did not establish an incident as alleged on July 26, 2000. The Office states that there were no witnesses, appellant did not remember exactly what happened and he waited six months to report the injury without explanation.

In a sworn statement dated December 4, 2001, appellant's supervisor, Mr. Stamper, states that on July 26, 2000 he received a call that appellant had fallen and struck his head. Mr. Stamper stated that he went to appellant's worksite, where he found appellant dazed and incoherent. An ambulance arrived and appellant received emergency room treatment. The record contains emergency room treatment notes indicating that appellant was treated on July 26, 2000 for blunt head trauma/concussion. According to Mr. Stamper, the safety officer at the scene speculated that appellant probably had blacked out. With respect to the delay in filing the claim, an employing establishment investigative report dated December 11, 2001 stated that appellant had assumed that his supervisor had completed a compensation claim.

The Board finds that the evidence clearly establishes a fall at work on July 26, 2000. The employing establishment had prompt notification of injury, appellant's supervisor reported that appellant appeared dazed and incoherent, and appellant received immediate medical treatment. All of the circumstances of the case support the occurrence of an employment incident on July 26, 2000. Appellant has stated that his head struck a work table; in the emergency room hospital report dated July 26, 2000, for example, appellant reported falling and striking his head on a table. There is no probative evidence establishing that appellant's head hit only the immediate supporting surface.⁴ The record therefore establishes an employment incident as alleged on July 26, 2000. Appellant has accordingly established the first component of fact of injury.

With respect to the medical evidence, the July 26, 2000 emergency room hospital report provided a history of injury and a diagnosis of blunt head trauma/concussion. The medical evidence therefore shows prompt treatment for a traumatic injury on July 26, 2000. The Board finds that the evidence is sufficient to establish that appellant fell and struck a table, resulting in a diagnosed head injury. Appellant has therefore established fact of injury in this case.

As appellant has established an injury in the performance of duty on July 26, 2000, the case will be remanded to the Office to determine the nature and extent of any employment-related disability. After such development as is deemed necessary, the Office should issue an appropriate decision.

⁴ Even, if the cause of the fall was established as a personal, nonoccupational pathology, since appellant struck a table rather than the immediate supporting surface, any resulting injury would be a compensable work injury. *See Edward V. Juare*, 41 ECAB 126 (1989).

The decisions of the Office of Workers' Compensation Programs dated January 2, 2002 and March 15, 2001 are set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, DC
February 5, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member