U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JORGE GOMEZ and DEPARTMENT OF THE ARMY,
ARMY RESERVE OFFICERS' TRAINING CORP BATTALION,
Daytona Beach, FL

Docket No. 03-1035; Submitted on the Record;
Issued July 24, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs exercised its discretion to determine whether appellant has incurred a reimbursable medical expense.

On April 2, 2002 appellant, then a 25-year-old army cadet, filed a traumatic injury claim alleging that on March 24, 2002 he suffered dehydration during a field training exercise. He explained that during the exercise he started complaining of a headache and was given some aspirin. On the way back to the University appellant started vomiting in the van and started going in and out of consciousness. He alleged that the convoy proceeded directly to the nearest hospital. On appeal appellant submitted a hospital bill and requested reimbursement of his expenses.[1]

A hospital report dated March 24, 2002 indicated that appellant was treated for dizziness but did not contain a diagnosis. An incident report indicated "cadet dehydration" and noted that numerous tests had been performed and that appellant was in good condition and had returned home. Major Jerry P. Sheppard stated in a letter: "It is my opinion that this injury was sustained within the line of duty and was the proximate result of dehydration." By letter dated April 18, 2002, the Office requested additional factual and medical information.

Appellant submitted answers to the Office's questions indicating that he was told by a physician that the injury was not due to a lack of water but due to a lack of electrolytes. He noted that he had been in "great" medical condition before the incident. No additional medical evidence was received.

[1] It is unclear whether the bill remains unpaid or whether appellant paid it and is requesting reimbursement.

By decision dated June 17, 2002, the Office denied appellant's claim for compensation on the grounds that he did not establish fact of injury since a condition had not been diagnosed in connection with the incident.[2]

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

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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, 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 causally related to the employment injury.[4] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. 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.[6] 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.[7] An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[8]

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the

[2] Appellant submitted additional evidence after the Office's August 20, 2002 decision. However, the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

[3] 5 U.S.C. §§ 8101-8193.

[4] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

[6] *John J. Carlone*, 41 ECAB 354 (1989).

[7] *Id*. For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

[8] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. *Frazier V. Nichol*, 37 ECAB 528 (1986).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

In this case, although appellant did submit factual evidence to support his claim that he was involved in a field training exercise on March 24, 2002, he did not submit any medical evidence to establish a diagnosis concerning his condition or a causal relationship between employment factors and his condition. A hospital report indicated that he was treated on March 24, 2002 for dizziness but did not provide a diagnosis or an opinion on the cause of his condition. The incident report described the events on March 24, 2002 and indicated "cadet dehydration" but also did not contain a diagnosis from a physician. Last, Major Sheppard stated that, in his opinion, appellant's "injury" was sustained in the line of duty and was the proximate result of dehydration; however, Major Sheppard is not considered a physician under the Act[10] and his opinion on the cause of appellant's condition has little probative value.[11] At the time the Office denied appellant's claim on June 17, 2002, the record did not contain any medical evidence establishing a diagnosis for appellant's condition. Thus, the Board finds that the evidence submitted by appellant is insufficient to meet his burden of proof that he sustained an injury caused by employment factors.

The Board also finds that the Office has not exercised its discretionary authority to determine whether appellant's hospital bill is reimbursable.

The Board has previously held that, even though a claimant is not entitled to reimbursement of medical expenses which are not authorized by the Office as a matter of right, the Office nevertheless has the discretion to approve unauthorized medical care pursuant to section 8103 of the Act.[12]

In the present case, appellant alleges that, after vomiting in the van and going in and out of consciousness, the convoy transported him directly to the nearest hospital. He alleges that the hospital bill should be paid by the Office, even though the Office has denied appellant's claim on fact of injury grounds.

Authorization and reimbursement of medical expenses are addressed by 20 C.F.R. sections 10.300 and 10.304 which provide in pertinent part:

> "When an employee sustains a work-related traumatic injury that requires medical examination, medical treatment or both, the employer shall authorize such examination and/or treatment by issuing a Form CA-16.[13]

[9] *Delores C. Ellyett*; *Ruthie M. Evans*, *supra* note 5.

[10] *Supra* note 3.

[11] Section 8101(2) of the Act provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law.

[12] 5 U.S.C. § 8103; *see also Michael L. Malone*, 46 ECAB 957 (1995); *Marjorie S. Geer*, 39 ECAB 1099 (1988).

[13] 20 C.F.R. § 10.300.

> "In cases involving emergencies or unusual circumstances, [the Office] may authorize treatment in a manner other than as stated in this subpart."[14]

The Office is required to exercise its discretion to determine whether medical care has been authorized or whether unauthorized medical care involved emergency or unusual circumstances and is, therefore, reimbursable regardless of whether the underlying claim for benefits has been accepted or denied.[15] On remand, the Office shall exercise its discretion to determine whether the hospital bill in question is reimbursable as involving an emergency or unusual circumstances because appellant was taken directly to the nearest hospital by the convoy while he was in and out of consciousness. The Office shall thereafter, issue a *de novo* decision regarding reimbursement/payment of this medical expense.

The decision of the Office of Workers' Compensation Programs dated June 17, 2002 is affirmed in regard to the denial of appellant's claim on fact of injury grounds and is set aside for further development regarding reimbursement of medical expenses.

Dated, Washington, DC
July 24, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

[14] 20 C.F.R. § 10.304.

[15] *Michael L. Malone*, *supra* note 12; *Herbert J. Hazard*, 40 ECAB 973 (1989).