U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BOB HAMILTON STEWART, JR. and DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

Docket No. 03-1410; Submitted on the Record;
Issued September 17, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury on November 1, 2002.

On January 16, 2003 appellant, then a 60-year-old high voltage electrician, filed a notice of traumatic injury and claim for continuation of pay/compensation alleging that, on November 1, 2002, while he was trying to secure wires after an electrical fire, caustic soda spilled out of a box causing a skin irritation on his left hand. Appellant asked that his medical bills be paid.

By letter dated February 7, 2003, the Office of Workers' Compensation Programs requested that appellant submit further information. Appellant submitted notes from Harrison Memorial Hospital which indicate that appellant was treated on November 1, 2002 in the emergency room by a physician. Appellant's hand was rinsed and the physician diagnosed caustic exposure, no evidence of active burn. Appellant noted that, after burning his left hand, he washed his hands for several minutes as soon as possible in keeping with "first aid requirements."

By decision dated March 11, 2003, the Office denied appellant's claim for the reason that he had not established that he sustained an injury as alleged. The Office indicated that, although the evidence supported the fact that appellant actually experienced the claimed accident, there was no evidence that a condition had been diagnosed in connection with this accident.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 the injury was sustained

[1] 5 U.S.C. §§ 8101-8193.

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."[2] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

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.[4] 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.[5] 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.

In the instant case, there is no dispute that caustic soda spilled on appellant's hand while he was in the performance of duty. However, no injury was noted by the doctors. Although the hospital notes indicate that appellant was treated for caustic exposure to his left hand, the notes also indicate that there was no evidence of active burn. Therefore, appellant has not met his burden of proof that this exposure caused an injury.[6] Accordingly, appellant has not established fact of injury and his claim was properly denied.

[2] *Caroline Thomas*, 51 ECAB 451, 454 (2000); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Daniel J. Overfield*, 42 ECBA 718, 721 (1991).

[4] *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *see also John J. Carlone*, 41 ECAB 354 (1989).

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

[6] Pursuant to the Office's regulations, 20 C.F.R. § 10.303(a), "Simple exposure to a workplace hazard, such as an infectious agent, does not constitute a work-related injury entitling an employee to medical treatment under the [Act]."

The decision of the Office of Workers' Compensation Programs dated March 11, 2003 is affirmed.

Dated, Washington, DC
September 17, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member