

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY M. LUEDTKE and DEPARTMENT OF AGRICULTURE,
FOOD, SAFETY & INSPECTION SERVICE, Minneapolis, MN

*Docket No. 03-1564; Submitted on the Record;
Issued September 2, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty, as alleged.

On February 4, 2003 appellant, then a 54-year-old food inspector, filed a claim for a traumatic injury stating that on February 3, 2003 he was overcome by paint fumes that had accumulated in his office. Appellant experienced shortness of breath, labored breathing, headaches, light headedness and nausea. Appellant's supervisor stated that a desk was painted in appellant's office and only he could smell the paint but other people worked there without any problems.

By letter dated February 26, 2003, the Office of Workers' Compensation Programs requested additional information from appellant including a diagnosis of his medical condition and a physician's opinion regarding how the injury resulted in the diagnosed medical condition.

Appellant submitted a copy of an email dated February 4, 2003 in which he stated that when he came in Monday morning the "aroma/fumes/toxicity" caused by the night inspector painting her desk "was overwhelming" and made him very ill. Appellant stated that there was no ventilation until he energized the power to the air conditioner. In a hospital emergency room report dated February 3, 2003, Dr. Gerald L. Van Es, a Board-certified family practitioner, indicated that appellant had been exposed to paint fumes that day at work. He performed a physical examination and diagnosed "dizziness, headache, light headedness and anxiety related to exposure to some paint fumes."

By decision dated April 10, 2003, the Office denied appellant's claim, stating that the evidence was not sufficient to establish that he sustained an injury, as alleged.

The Board finds that appellant did not sustain an injury in the performance of duty, as alleged.

To determine whether a federal employee has sustained a traumatic 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.¹ 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.² 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.³

The Office accepted that the claimed event occurred, that is, that appellant was exposed to paint fumes. In order to establish fact of injury, appellant must submit probative medical evidence on the causal relationship between a diagnosed condition and the employment incident.⁴ Dr. Van Es’ February 3, 2003 hospital emergency room report noted that appellant had been exposed to paint fumes and diagnosed dizziness, headache, light headedness and anxiety related to exposure to some paint fumes. The diagnoses of dizziness, headache, light headedness and anxiety, however, describe symptoms and do not constitute a firm diagnosis of a medical condition.⁵ Further, Dr. Van Es did not provide a reasoned opinion on causal relationship between any diagnosed condition and the employment incident. His opinion is therefore insufficient to establish that appellant sustained an injury due to any exposure to paint fumes. No other evidence of record provides the requisite diagnosis and opinion on causal relationship. Although the Office informed appellant of the evidence he must submit to establish his claim, appellant did not submit the necessary evidence. He has therefore failed to establish his claim.

¹ *Deborah L. Beatty*, 54 ECAB ____ (Docket No. 02-2294, issued January 15, 2003).

² *Robert J. Krstyen*, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

³ *Id.*

⁴ *Deborah L. Beatty*, *supra* note 1.

⁵ *See id.*

The April 10, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 2, 2003

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member