United States Department of Labor
Employees' Compensation Appeals Board

J.F., Appellant	)	
and	)	**Docket No. 09-1061**
	)	**Issued: November 17, 2009**
DEPARTMENT OF THE AIR FORCE, AIR NATIONAL GUARD, Fort Worth, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On March 13, 2009 appellant filed a timely appeal of a February 13, 2009 decision of the Office of Workers' Compensation Programs denying modification of a May 23, 2008 decision denying his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a traumatic injury on February 8, 2008 in the performance of duty.

FACTUAL HISTORY

On February 8, 2008 appellant, then a 35-year-old aircraft cargo specialist, filed a traumatic injury claim alleging that on that day his open-hand wound was exposed to latrine water while servicing an aircraft.[1] He was removing waste water from the aircraft and, when he

[1] Appellant did not specify which hand had the open wound. The medical evidence indicates it may have been his left hand.

opened the door to a valve, waste water unexpectedly came out and went down his sleeve and into his glove. Appellant did not stop work.

On April 9, 2008 the Office advised appellant of the factual and medical evidence necessary to establish his claim and allowed him 30 days to submit additional evidence. It requested a physician's report with an opinion as to how the reported work incident caused or aggravated an injury. Appellant did not respond.

In a May 23, 2008 decision, the Office denied appellant's claim finding that, although the claimed incident occurred, there was no medical evidence with a diagnosis related to the event.

Appellant requested reconsideration on November 4, 2008 and indicated that he was providing records supporting his case. He noted that his supervisor had him go to an emergency room for blood work following the February 8, 2008 work incident. Appellant advised that he had no medical problems. He requested payment for the medical bills related to his emergency room visit. In a February 8, 2008 treatment note, Dr. Scott Hughes, an osteopath specializing in emergency medicine, noted that sewage from an aircraft was dumped on appellant. He determined that appellant had a biohazard exposure and performed blood work for hepatitis, rapid plasma reagin and human immunodeficiency virus (HIV).

In a February 13, 2009 decision, the Office denied modification of its May 23, 2008 decision finding insufficient medical evidence providing a diagnosis related to the work incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[3]

To determine whether a federal 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. 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.[4]

[2] 5 U.S.C. §§ 8101-8193.

[3] *S.P.*, 59 ECAB ___ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *Id*.

Section 10.303(a) of Office regulations provides that simple exposure to a workplace hazard, such as an infectious agent, does not constitute an injury entitling an employee to medical treatment under the Act unless the employee has sustained an identifiable injury or medical condition as a result of that exposure.[5] Section 10.313(b) provides that the Office can authorize treatment where there is "actual or probable exposure to a known contaminant due to an injury, requiring disease specific measures against the infection."[6] The Office procedure manual addresses high-risk employment, notes that certain kinds of employment routinely present situations which may lead to infection by contact with animals, human blood, bodily secretions and other substances. Conditions such as HIV infection and hepatitis B more commonly represent a work hazard in health care facilities, correctional institutions and drug treatment centers, among others, than in federal workplaces as a whole. For claims based on transmission of a communicable disease where the means of transmission and the incubation period are medically feasible, the Office should, if the source of infection is a known or probable carrier of the disease, accept the case for the physical injury involved and authorize prophylactic treatment.[7]

The Office procedure manual provides that the Act does not authorize preventive measures such as vaccines and inoculations and, in general, preventive treatment is the responsibility of the employing establishment except that preventive care can be authorized by the Office for complications of preventive measures which are provided or sponsored by the agency, such as adverse reaction to prophylactic immunization and or an injury involving actual or probable exposure to a known contaminant.[8]

ANALYSIS

The record reflects that on February 8, 2008 appellant was exposed to latrine water while servicing an aircraft as alleged. At that time, there was an open wound on one of his hands. However, the medical evidence does not establish that exposure to latrine water caused or aggravated an injury or illness.

On February 8, 2008 Dr. Hughes noted that appellant's history of injury consisted of sewage from an aircraft being dumped on appellant. He assessed biohazard exposure and

[5] 20 C.F.R. § 10.303(a). This regulation at section (b) provides:

> Employers may be required under other statutes or regulations to provide their employees with medical testing and/or services in situations described in paragraph (a) of this section. For example, regulations issued by the Occupational Safety and Health Administration at 29 C.F.R. chapter XVII require employers to provide their employees with medical consultations and/or examinations when they either exhibit symptoms consistent with exposure to a workplace hazard, or when an identifiable even such as a spill, leak or explosion occurs and results in the likelihood of exposure to a workplace hazard.

[6] *Id*. at § 10.313(b).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.8 (October 1995).

[8] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.7 (April 1992).

performed blood work. Although Dr. Hughes described the February 8, 2008 work incident and indicated biohazard exposure, he did not address whether appellant's open-hand wound exposure to latrine water caused or aggravated a diagnosed medical condition.[9] Appellant also does not assert that the exposure to latrine water caused any injury or illness. Consequently, the medical evidence does not support that the February 8, 2008 exposure to latrine water caused an injury.

The Board notes that appellant has requested payment of his medical bill from his February 8, 2008 emergency room visit. However, the Office's regulations provide that 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 unless the employee has sustained an identifiable injury or medical condition as a result of that exposure.[10] In this case, there is no identifiable injury or medical condition that appellant sustained. This is also not a case where appellant worked in the type of employment, such as a health care facility, correctional institution, or drug treatment facility, which could routinely present a situation that could lead to infection by contact with animals, human blood, bodily secretions or other substances.[11] Furthermore, this is not a case where there was a known contaminant.[12] The medical evidence is insufficient to establish that he sustained an identifiable and compensable injury or that he was otherwise entitled to reimbursement for his medical expenses under Office regulations or procedures.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a traumatic injury on February 8, 2008 in the performance of duty.

[9] *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[10] *See supra* note 3. *See also B.A.*, Docket No. 08-1542 (issued February 11, 2009). *Compare Joseph Kripp*, 55 ECAB 121 (2003).

[11] *See supra* notes 6, 7. *See also N.S.*, Docket No. 09-1652 (March 18, 2008).

[12] *See supra* notes 6, 7.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated February 13, 2009 and May 23, 2008 are affirmed.

Issued: November 17, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board