U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DOUGLAS L. BLACKMON and DEPARTMENT OF THE INTERIOR, CAPE HATTERAS NATIONAL SEASHORE, Manteo, N.C.

*Docket No. 97-2189; Submitted on the Record;*
*Issued April 26, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury on November 29, 1996 while in the performance of duty.

On December 2, 1996 appellant, then a 42-year-old engine equipment operator, filed a notice of traumatic injury and claim, alleging that he sustained an injury to his lower back on November 29, 1996 while building ramps and welding. Appellant did not stop work. By decision dated May 15, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the medical evidence of record did not establish that he sustained an injury as alleged.

The Board has duly reviewed the case record on appeal and finds that appellant has not established that he sustained an injury as alleged.

A person who claims benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim, including that he sustained an injury while in the performance of duty and that he had disability as a result.[2] In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered one in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred.[3] In order to meet his burden of proof to establish the fact that

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Daniel R. Hickman*, 34 ECAB 1220 (1983); *see* 20 C.F.R. § 10.110(a).

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.(2)(a) (June 1995).

he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[4] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[5] The belief of claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.[6]

In the present case, the Office accepted that appellant was exposed to the claimed incident, but denied his claim as the medical evidence did not establish that he sustained a personal injury. Appellant submitted a form report dated December 11, 1996 by Dr. Daniel Goldberg, a chiropractor, who diagnosed lumbosacral strain/sprain and cervicalgia. In a letter dated April 9, 1997, the Office advised appellant that under the Act, a chiropractor is only considered a physician when diagnosing and treating through manual manipulation of the spine a subluxation of the spine as diagnosed by x-ray.[7] The Office indicated that the medical evidence of record did not establish a subluxation of the spine as demonstrated by x-ray and therefore appellant's chiropractor was not a physician under the Act and there was no evidence in support of his claim. As appellant did not submit any evidence in response to this letter and the record does not contain any medical evidence which indicates that appellant sustained an injury as a result of the claimed incident, he did not meet his burden of proof in establishing that he sustained an injury as alleged on November 29, 1996.[8]

[4] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

[5] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[6] *Manuel Garcia*, 37 ECAB 767 (1986).

[7] 5 U.S.C. § 8101(2).

[8] On appeal, appellant attempted to submit additional evidence in support of his claim. The Board's review is limited to the evidence that was before the Office at the time of its final decision. The Board therefore cannot consider this new evidence. Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c); *see Donna K. Schuler* 38 ECAB 273 (1986).

The decision of the Office of Workers' Compensation Programs dated May 15, 1997 is hereby affirmed.

Dated, Washington, D.C.
April 26, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member