U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERIC A. MENDENHALL and FEDERAL JUDICIARY PROBATION OFFICE, Naples, FL

Docket No. 00-2280; Submitted on the Record;
Issued June 1, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury while in the performance of duty on September 9, 1999.

The Board has duly reviewed the case record and finds that appellant failed to meet his burden of proof in establishing that he sustained an injury while in the performance of duty.

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, and that the claim was filed within the applicable time limitations of the Act.[2] An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,[3] that the injury was sustained while in the performance of duty,[4] and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

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[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Robert A. Gregory*, 40 ECAB 478 (1989).

[4] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *Steven R. Piper*, 39 ECAB 312 (1987).

[6] *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

There is no dispute that appellant is a federal employee, that he timely filed his claim for compensation benefits, and that the incident occurred as alleged. Appellant, then a 33-year-old probation officer claimed that, on September 9, 1999, while making an arrest of one of his supervised releasees, the releasee's spouse charged at him pushing him into the handle of a door. He stated that he "bear hugged" her and twisted causing lower back pain. However, the Office, in a decision dated December 10, 1999, found that the evidence was insufficient to establish that an injury resulted from the incident.[7]

The Board finds that appellant has not established that the September 9, 1999 employment incident resulted in an injury. To support the claim, appellant submitted a November 5, 1999 new patient evaluation report by Dr. John D. Campbell, a Board-certified neurologist.

In the November 5, 1999 report, Dr. Campbell provided a history of the September 9, 1999 employment injury as provided by appellant and diagnosed lumbar radiculopathy. Dr. Campbell failed to address a causal relationship between the September 9, 1999 employment incident and the diagnosed condition. Therefore, Dr. Campbell's report is insufficient to establish appellant's claim.

In this case, there is no rationalized medical opinion evidence supporting a causal relationship between appellant's September 9, 1999 employment incident and his diagnosed condition of lumbar radiculopathy. The Office, by letter dated November 9, 1999, advised appellant of the evidence needed to establish his claim, but such evidence has not been submitted. Therefore, the Board finds that the evidence of record is insufficient to meet appellant's burden of proof.

[7] The Board notes that, in its December 10, 1999 decision, the Office referred to an incorrect date of injury. The correct date of injury is September 9, 1999.

The decision of the Office of Workers' Compensation Programs dated December 10, 1999 is affirmed.[8]

Dated, Washington, DC
June 1, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

[8] The Board notes that subsequent to the Office's December 10, 1999 decision and on appeal appellant submitted additional evidence. This evidence was not previously considered by the Office prior to its decision of December 10, 1999 and, therefore, cannot be considered by the Board. 20 C.F.R. § 501.2(a). Appellant may resubmit this evidence to the Office, with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).