

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT D. MANNON and U.S. POSTAL SERVICE,  
VEHICLE MAINTENANCE FACILITY, Memphis, Tenn.

*Docket No. 96-2386; Submitted on the Record;  
Issued July 6, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on May 6, 1996, as alleged.

The Board has duly reviewed the case record in the present appeal and finds that the Office of Workers' Compensation Programs properly determined that appellant failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on May 6, 1996, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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.<sup>2</sup> An individual seeking disability compensation must also establish that an injury was sustained at the time,<sup>3</sup> place and in the manner alleged,<sup>3</sup> that the injury was sustained while in the performance of duty,<sup>4</sup> and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>6</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>4</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *Steven R. Piper*, 39 ECAB 312 (1987).

<sup>6</sup> *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, a mechanic, claimed that on May 6, 1996, while washing a vehicle he stepped into a drain which was missing its steel cover and twisted his leg and hip, pulling his hip out of its socket. However, the Office found that the evidence was insufficient to establish that an injury resulted from the incident.<sup>7</sup>

The Board finds that appellant has not established that the May 6, 1996 employment incident resulted in an injury. To support the claim, appellant submitted several-duty status reports (Forms CA-17) completed by Dr. Dwayne P. Curle, a chiropractor, on which he noted his findings of low back strain and diagnosed sciatica. Dr. Curle is a chiropractor, and the Act specifies that a chiropractor is only considered a physician to the extent that his reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. Since Dr. Curle did not diagnose a subluxation based on x-rays, he may not be considered a physician under the Act and his reports do not constitute competent medical evidence. By letter dated June 6, 1996, the Office advised appellant of the type of 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.

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<sup>7</sup> The Board notes that the employing establishment controverted appellant's claim due to his failure to immediately indicate to it or a doctor that the injury was job related. However, after receiving appellant's response to its request for additional factual information, the Office, in its July 16, 1996 decision, while not specifically stating so, accepted incident.

The decision of the Office of Workers' Compensation Programs dated July 16, 1996 is affirmed.<sup>8</sup>

Dated, Washington, D.C.  
July 6, 1998

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> The Board notes that appellant filed his application for review by the Board on July 24, 1996, but he also filed, on that same date, a request for hearing before an Office hearing representative. The Board and the Office may not have concurrent jurisdiction over the same issue and, therefore, any decision of the Office on the request for a hearing would be null and void; *see Douglas E. Billings*, 41 ECAB 880 (1990).