U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WENFORD D. HUMPHREY and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVCE, Denver, Colo.

Docket No. 97-96; Submitted on the Record;
Issued October 26, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
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.

The Board has duly reviewed the case on appeal and finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

Appellant filed a claim on February 21, 1995 alleging that on January 27, 1995 he was attacked while in the performance of duty and sustained physical and emotional injuries. By decision dated August 23, 1995, the Office of Workers' Compensation Programs denied appellant's claim finding that he failed to establish fact of injury. Appellant requested reconsideration on August 31, 1995, January 9 and August 14, 1996. By decisions dated October 20, 1995, January 22 and September 12, 1996 the Office denied modification of its August 23, 1995 decision.

An employee seeking benefits under the Federal Employees' Compensation Act 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, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained 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."[1] 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.[2]

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[1] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[2] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

In order to determine whether an employee actually sustained an 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.

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[3] In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.[4] An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.[5] A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.[6]

In this case, appellant alleged that he was attacked by a member of the employing establishment security office. The security officer involved denied attacking appellant and stated that he merely held appellant's arm briefly and did not strike him. The employing establishment submitted witness statements supporting that there was no assault. As the employing establishment has submitted statements from witnesses asserting that appellant was not attacked nor assaulted and appellant has submitted no evidence in support of his contention that he was assaulted in the performance of duty, the Board finds that appellant has failed to meet his burden of proof in establishing that the alleged incident occurred as alleged. Therefore, appellant has failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty.[7]

[3] *Elaine Pendleton, supra* note 1.

[4] *John J. Carlone*, 41 ECAB 354 (1989).

[5] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[6] *Id.* at 255-56.

[7] Appellant submitted additional statements attributing his emotional condition to alleged actions by the employing establishment which occurred over a period of time greater than one work shift. As these statements relate to a claim for an occupational disease which has not been addressed by the Office, the Board may not consider this claim for the first time on appeal. 20 C.F.R. § 501.2(c).

The decisions of the Office of Workers' Compensation Programs dated September 12 and January 22, 1996 and October 20, 1995 are hereby affirmed.

Dated, Washington, D.C.
October 26, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member