

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MONTE G. STARRETT and BENDIX FIELD ENGINEERING CORPORATION, Chesapeake, Va.

*Docket No. 96-1242; Submitted on the Record;
Issued May 12, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he was a federal employee at the time of his claimed August 22, 1991 injury.

On August 3, 1994 appellant, then a 45-year-old wireman, filed a claim for compensation benefits alleging that he sustained an injury to his head, arms, and right leg on August 22, 1991 when he fell from a ladder while working on a ship in Yokosuka, Japan. Appellant's supervisor indicated on the claim form that appellant's employer at the time of the claimed injury was the Bendix Field Engineering Corporation.¹

A federal government notice of employment action dated February 22, 1990, noted that appellant's federal employment with the Department of the Navy had been terminated effective February 23, 1990 due to budget cuts.

The record contains a W-2 wage and tax statement for 1991 which indicated that appellant was employed by the Bendix Field Engineering Corporation during 1991.

On a Longshoreman's and Harbor Workers' Compensation claim form dated September 18, 1991, it was noted that appellant was employed by the Bendix Field Engineering Corporation at the time of his August 22, 1991 injury.

In a memorandum dated April 7, 1992, the Mare Island naval shipyard advised the Office of Workers' Compensation Programs that appellant worked for the Bendix Field Engineering Corporation.

¹ The record shows that prior to his job with Bendix appellant had been employed by the Department of the Navy and that his last day of work at the federal employing establishment was February 23, 1990.

In an internal memorandum dated May 5, 1992, from the Bendix Field Engineering Corporation to appellant, Bendix advised appellant that his employment would be terminated effective September 30, 1991 because he had not worked for Bendix since that date.

In a January 18, 1995 memorandum, of a telephone message from appellant the Office noted that appellant had advised that he was employed by the Bendix Field Engineering Corporation at the time of his claimed August 22, 1991 injury.

By decision dated January 19, 1995, the Office denied appellant's claim for compensation benefits on the grounds that he was not a federal employee at the time of his August 22, 1991 injury and was therefore not entitled to compensation benefits under the Federal Employees' Compensation Act.

By letter dated February 13, 1995, submitted through his attorney, appellant requested reconsideration of the denial of his claim.

In a narrative report dated December 23, 1994, Dr. Joseph Pramuk, a general practitioner, provided a history of appellant's condition and findings on examination and indicated that appellant had sustained a fall in August 1991 probably associated with a seizure and probably aggravating a previously diagnosed underlying degenerative disc and joint disease of the lumbar spine.

By decision dated March 24, 1995, the Office denied modification of its January 19, 1995 decision.

The Board finds that appellant was not an employee of the federal government within the meaning of the Act at the time of his claimed August 22, 1991 injury and is therefore not entitled to compensation benefits under the Act.

A claimant of benefits under the Act has the burden to establish all the essential elements of his claim, including that he, at the time of injury, was a civil employee of the United States.² The question of whether a person is an employee of the United States is untimely a question of fact to be decided on an individual basis in the particular case. Included among the factors to be considered in resolving the issue are the right to control the work activities, the right to hire and fire, the nature of the work performed, the method of payment for the work, the length of time on the job, and the intention of the parties.³

In this case, appellant filed a claim for federal compensation benefits for an injury on August 22, 1991. However, the evidence of record establishes that appellant's employment with the Department of the Navy had ceased as of February 23, 1990, prior to the claimed 1991 injury. A federal government notice of employment action dated February 22, 1990 noted that appellant's federal employment with the Department of the Navy was terminated effective February 23, 1990 due to budget cuts. The record contains several documents establishing that

² See, e.g., *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ See *Carl R. Clover*, 41 ECAB 625 (1990).

appellant was an employee of a private, nonfederal company, the Bendix Field Engineering Corporation, at the time of the 1991 injury, including a W-2 wage and tax statement for 1991, a form dated September 18, 1991 in which the Office indicated that appellant was employed by the Bendix Field Engineering Corporation at the time of his August 22, 1991 injury, and an internal memorandum dated May 5, 1992 from the Bendix Field Engineering Corporation to appellant in which Bendix advised appellant that his employment would be terminated effective September 30, 1991 because he had not worked for Bendix since that date. Additionally, an employing establishment supervisor indicated on appellant's claim form that his employer at the time of the claimed injury was the Bendix Field Engineering Corporation and, in a January 18, 1995 memorandum of a telephone message from appellant, the Office noted that appellant had advised that he was employed by the Bendix Field Engineering Corporation at the time of his claimed August 22, 1991 injury. The medical report submitted by appellant to the Office in support of his application for reconsideration of the Office's January 19, 1995 decision denying his claim does not establish that appellant was a federal employee at the time of the claimed August 22, 1991 injury. Based on this evidence the Board finds that appellant was not a civil employee of the United States at the time of the August 22, 1991 injury.

The March 24, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
May 12, 1998

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member