

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREGORY D. POWELL and DEPARTMENT OF THE ARMY,
Fort McCoy, Wis.

*Docket No. 96-2134; Submitted on the Record;
Issued October 14, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, 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 on December 12, 1995.

Appellant, a 37-year-old mobile equipment server, filed a notice of traumatic injury (Form CA-1) alleging that while "winding up a trl and climbing 915 trk," he sustained a left shoulder rotator cuff tear/strain. He alleged the injury occurred on December 12, 1995 at 2:00 p.m. and that he notified his supervisor of the injury on April 9, 1996.

Appellant stated that he first received medical attention on December 12, 1995 from Dr. Rick K. St. Pierre, an orthopedic surgeon.

By letter dated May 1, 1996, the Office of Workers' Compensation Programs requested from appellant factual and medical evidence supportive of his claim. The Office allotted appellant 30 days to submit the requested information. Appellant did not respond within the time allotted.

The Office denied the claim on June 4, 1996, noting that appellant had submitted no medical evidence and had failed to establish a *prima facie* case for compensation entitlement. This appeal followed.

On appeal appellant contends that he believes that all medical records, bills, etc., have been submitted.

The Board finds that appellant has failed to establish that he sustained a left shoulder injury in the performance of duty on December 12, 1995, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 timely filed within the applicable time limitation period 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.² There is no dispute that appellant is a federal employee and that he timely filed a claim for compensation benefits.

The record contains no medical evidence to substantiate that appellant was treated for any injury as alleged despite his indication that he was treated on December 12, 1995 by Dr. St. Pierre, an orthopedic surgeon. Therefore, he has failed to meet his burden of establishing that he sustained an injury in the performance of duty on December 12, 1995, as alleged.

The decision of the Office of Workers' Compensation Programs dated June 4, 1996 is hereby affirmed.

Dated, Washington, D.C.
October 14, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Daniel R. Hickman*, 34 ECAB 1220 (1983).