

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JUNE F. LUDLOW and FEDERAL DEPOSIT INSURANCE CORPORATION,  
SYSTEM CONTROL VERIFICATION CENTER, Dallas, Tex.

*Docket No. 97-245; Submitted on the Record;  
Issued September 25, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury on June 12, 1996 while in the performance of duty.

On June 12, 1996 appellant, then a 49-year-old lead technician, filed a notice of traumatic injury and claim, alleging that she sustained headaches and an injury to her back, chest and left leg when she was assaulted by another employee, Sheila Umeh. Appellant reported that Ms. Umeh kicked a box into her leg, threw a box at her and hit her in her chest leaving three cuts and a bruise.

Appellant submitted a witness statement by Mary J. Hoffpauir with her claim. Ms. Hoffpauir indicated that on June 12, 1996, she overheard an altercation between appellant and Ms. Umeh which got out of hand. She reported that she witnessed Ms. Umeh kick a box at appellant which hit her leg and hit appellant on her upper left shoulder/chest area. In a subsequent unsigned statement received August 28, 1996, apparently by Ms. Hoffpauir, she expanded on the altercation between Ms. Umeh and appellant.

In a decision dated September 12, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that although the claimed incident took place at the time, place and in the manner alleged, fact of injury was not established as appellant did not demonstrate that an injury occurred.

The Board finds that appellant did not meet her burden of proof in establishing that she sustained an injury while in the performance of duty on June 12, 1996.

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.<sup>1</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>2</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>3</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>4</sup>

In this case, appellant submitted a form report and a duty status form report dated June 28, 1996 by Dr. Jerry N. Johnson, a chiropractor. Dr. Johnson diagnosed cephalgia, cervical joint dysfunction, cervical sprain, intercostal neuralgia, thoracic joint dysfunction, thoracic sprain/strain, lumbar intervertebral disc syndrome and lumbar joint dysfunction and indicated that appellant could not perform her usual work, but could perform light duty effective June 24, 1996. The Board notes that a chiropractor cannot be considered a physician under the Act unless it is established that there was a subluxation demonstrated by x-ray.<sup>5</sup> Dr. Johnson did not diagnose a subluxation of the spine, and there is no indication that he took any x-rays of appellant after the employment incident. Although appellant was advised on this deficiency in the medical evidence by letter dated August 21, 1996, she did not submit any further medical evidence. As appellant has not submitted any probative medical evidence substantiating that she sustained an injury as a result of the altercation that took place on June 12, 1996, she has not met her burden of proof.

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<sup>1</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>2</sup> *John J. Overfield*, 42 ECAB 718 (1991).

<sup>3</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>4</sup> *Id.*

<sup>5</sup> 5 U.S.C. § 8101(2); see *Samuel Theriault*, 45 ECAB 586 (1994); *Kathryn Haggerty*, 45 ECAB 383(1994)

The decision of the Office of Workers' Compensation Programs dated September 12, 1996 is hereby affirmed.

Dated, Washington, D.C.  
September 25, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member