

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HELEN J. Mc DANIEL and DEPARTMENT OF THE AIR FORCE,  
TELEVISION-AUDIO SUPPORT ACTIVITY, Mather, Calif.

*Docket No. 97-1818; Submitted on the Record;  
Issued April 1, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an injury in the performance of duty on September 29, 1995.

In the present case, appellant filed a traumatic injury claim (Form CA-1) alleging that on September 29, 1995 she sustained an injury to her left ankle as a result of a fall while entering an office from a hallway. By decision dated November 26, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that fact of injury was not established.

The Board has reviewed the record and finds that appellant has not established that she sustained an injury in the performance of duty on September 29, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing that she sustained an injury while in the performance of duty.<sup>2</sup> 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. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.<sup>3</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Claudia A. Dixon*, 47 ECAB 168 (1995); *see also* 20 C.F.R. § 10.110(a).

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

With respect to the alleged employment incident on September 29, 1995, appellant indicated on the claim form that she fell while at work injuring her left ankle. In a medical treatment form dated December 21, 1995, appellant stated that she initially sought medical treatment on October 9, 1995. In a form medical report of occupational injury for the State of California dated December 26, 1995, Dr. Susan E. Scholey, a specialist in physical medicine and rehabilitation, stated that appellant had a fracture of the left distal fibula. In a section of the form reserved for appellant's subjective complaints, the sentence reads: "[Appellant] slipped and fell on tile floor in her home ten days ago, twisting her left ankle. Pain is persisting, worse with walking." In block number 20, Dr. Scholey diagnosed "fracture, left distal fibula." As to whether this was an occupational injury, she checked the "no" block.

On October 17, 1996 the Office notified appellant that she was required to clarify the "discrepancy as to the location where your injury occurred," and that she should submit medical evidence to support her claim that she sustained an injury on September 29, 1995 while in the performance of duty. The Office advised appellant that she had 30 days to submit the requested information.

On November 26, 1996, the Office, in a decision, denied appellant's claim on the grounds that the evidence of record failed to establish that appellant sustained a work-related injury on September 29, 1995.

The Board finds that appellant has failed to establish that she sustained a work-related injury on September 29, 1995.

As noted above, to establish fact of injury appellant must also submit medical evidence establishing a diagnosed injury causally related to the incident of September 29, 1995. A review of the medical evidence indicates that the evidence submitted is not sufficient to meet appellant's burden of proof. The only medical report contained in the record is a report from Dr. Scholey dated December 26, 1995. In block number 17 which states, "patient please complete this portion, if able to do so," the typed statement reads as follows, "patient states she fell entering the office from the hallway on [September] 29[,] [19]95 and injured her ankle."

In the absence of probative medical evidence containing a description of the employment incident on September 29, 1995 and a reasoned opinion establishing causal relationship between the incident and her medical condition, the Board finds that appellant has not met her burden of proof in this case.

The appellant did not submit a photocopy of the hospital emergency room records where the x-rays were taken, a cast/splint was applied and crutches were given to her. These records were crucial in showing the history of injury, the diagnostic tests, treatment, final diagnosis and instructions on discharge. Because appellant failed to submit evidence which was available to her, she has failed to meet her burden of proof.

The November 26, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.<sup>4</sup>

Dated, Washington, D.C.  
April 1, 1999

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> The Board notes that subsequent to the Office's November 26, 1996 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal; *see James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c).