

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS E. WALKER and DEPARTMENT OF AGRICULTURE,
PERSONNEL OPERATIONS BRANCH, Minneapolis, MN

*Docket No. 98-1151; Submitted on the Record;
Issued December 23, 1999*

DECISION and ORDER

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

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 11, 1997, as alleged.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on December 11, 1997, 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, and that the claim was filed within the applicable time limitations of the Act.² An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,³ that the injury was sustained while in the performance of duty,⁴ and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.⁵ 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.⁶

There is no dispute that appellant is a federal employee, that he timely filed his claim for compensation benefits, and that the incident occurred as alleged. However, the Office found that

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Robert A. Gregory*, 40 ECAB 478 (1989).

⁴ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *Steven R. Piper*, 39 ECAB 312 (1987).

⁶ *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

the evidence was insufficient to establish that an injury resulted from the incident.⁷ Appellant, a food inspector, claimed that on December 11, 1997, “While stepping over a piece of equipment in a narrow passage, foot slipped, I lost my balance, extended right arm, caught all my weight on right arm.” He went on to say that this resulted in a strain and/or possible partial separation of acromioclavicular joint. On the reverse side of the claim form, the employing establishment indicated that appellant stopped work on December 11, 1997 and returned on December 21, 1997.

The Board finds that appellant has not established that the December 11, 1997 employment incident resulted in an injury. No medical evidence was submitted with appellant’s claim. By letter dated January 21, 1998 the Office advised appellant of the specific type of evidence needed to establish his claim. However, appellant failed to respond to the Office’s request within the allotted time. As appellant has failed to establish a *prima facie* claim by the submission of medical evidence necessary to substantiate his claim, he has failed to meet his burden of proof.⁸

The decision of the Office of Workers’ Compensation Programs dated February 19, 1998 is affirmed.

Dated, Washington, D.C.
December 23, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁷ The Office stated in its decision dated February 19, 1998, that previously paid continuation of pay would be charged to appellant’s sick and/or annual leave or if he does not have a leave balance, the money already paid as continuation of pay will be deemed an overpayment within the meaning of 5 U.S.C. § 5584.

⁸ The Board notes that appellant submitted factual and medical evidence after the Office issued its decision and with his appeal. As this evidence was not previously considered by the Office prior to its decision of February 19, 1998, the evidence represents new evidence which cannot be considered by the Board. The Board’s jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Appellant should resubmit this evidence to the Office, together with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.138(b).