

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RONALD W. HART and DEPARTMENT OF HEALTH & HUMAN SERVICES, NATIONAL CENTER OF HEALTH & HUMAN SERVICES, Jefferson, AR

*Docket No. 98-1554; Submitted on the Record;  
Issued December 14, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained an injury while in the performance of duty on September 20, 1996.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained an injury while in the performance of duty on September 20, 1996.

On October 15, 1996 appellant, a 54-year-old research scientist, filed a traumatic injury claim (Form CA-1) alleging that on September 20, 1996 he was lifting a centrifuge from the shipping container when he felt pain and numbness radiating down his right arm from the thoracic vertebrae into his thumb and two forefingers. Appellant did not stop work.

By two letters dated February 26, 1997, the Office of Workers' Compensation Programs advised appellant to submit medical evidence regarding the September 20, 1996 injury and factual evidence addressing whether he had sustained any injuries prior to September 20, 1996.

By decision dated April 25, 1997, the Office found the evidence of record sufficient to establish that appellant experienced the claimed event. The Office, however, found the medical evidence of record insufficient to establish that appellant sustained an injury caused by the September 20, 1996 employment incident. Accordingly, the Office denied appellant's claim.<sup>1</sup>

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<sup>1</sup> The Office received evidence from appellant subsequent to the April 25, 1997 decision. In letters dated December 18, 1997 and April 2, 1998, the Office informed appellant that they were in receipt of his evidence but could not take any action until he decides which appeal rights he wished to pursue. The Board does not have jurisdiction to review evidence that was not before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c).

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</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.<sup>5</sup> In this case, the Office accepted that appellant actually experienced the claimed event. The Board finds that the evidence of record supports this incident.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.<sup>6</sup> In the instant case, appellant has submitted no rationalized medical evidence establishing that he sustained a medical condition causally related to the September 20, 1996 employment incident.

The only medical evidence before the Office at the time of its decision was an October 21, 1996 medical report from Dr. Richard E. McCarthy, a Board-certified orthopedic surgeon. Dr. McCarthy noted that, after appellant lifted a heavy object at work, he felt a sudden change in the pain in his neck along the right side, which extended into his right shoulder to his arm and then down his forearm dorsally along the radial side and into his thumb. He found that neurologically appellant has diminished sensation over the right thumb to light touch but, otherwise, all neurologic testing to sensory and motor testing was normal. The x-rays revealed that appellant has marked degenerative changes at C5-6 with encroachment on the neuroforamina. Dr. McCarthy stated that he suspected that this was not a new event and that appellant had irritated his 6 root on the right side. Dr. McCarthy's medical report is insufficient

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Daniel J. Overfield*, 42 ECAB 718 (1991).

<sup>5</sup> *Elaine Pendleton*, *supra* note 3.

<sup>6</sup> 20 C.F.R. § 10.110(a); *see John M. Tornello*, 35 ECAB 234 (1983).

to establish appellant's burden because he failed to provide a diagnosis and to address a causal relationship between appellant's conditions and the September 20, 1996 employment incident.<sup>7</sup>

Inasmuch as appellant has failed to submit medical evidence establishing that he sustained an injury while in the performance of duty on September 20, 1996, the Board finds that he has failed to satisfy his burden of proof.

The April 25, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.  
December 14, 1999

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> *Daniel Deparini*, 44 ECAB 657, 659 (1993).