

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEVIN A. SAVAGE and DEPARTMENT OF THE TREASURY,
ALCOHOL, TOBACCO & FIREARMS, McAllen, Tex.

*Docket No. 97-1725; Submitted on the Record;
Issued February 18, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has established that he sustained an injury in the performance of duty on August 20, 1996.

In the present case, appellant filed a traumatic injury claim (Form CA-1) alleging that on August 20, 1996 he was involved in an automobile accident while in the performance of duty causing injury and pain to his neck and back. By decision dated December 6, 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 he sustained an injury in the performance of duty on August 20, 1996.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that he or she sustained an injury while in the performance of duty.² 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.³

¹ 5 U.S.C. §§ 8101-8193.

² *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.110(a).

³ *John J. Carlone*, 41 ECAB 354 (1989).

With respect to the alleged employment incident on August 20, 1996 appellant submitted a treatment note dated August 20, 1996 indicating that he had been treated on that day for back injury. By letter dated October 16, 1996, the Office advised appellant that he needed to submit additional information regarding his claim for compensation, including a detailed narrative medical report explaining how the doctor believed that appellant's federal employment caused his current medical condition.

As noted above, to establish fact of injury appellant must also submit medical evidence establishing a diagnosed injury causally related to the incidents of August 20, 1996. A review of the medical evidence indicates that the evidence submitted is not sufficient to meet appellant's burden of proof. The only medical evidence of record is a treatment note dated August 20, 1996 indicating that appellant was provided care instructions on that date for a back injury.⁴ This report is insufficient to establish fact of injury as it provides no factual history of appellant's injury but merely recommends certain treatments he should undertake to care for a back injury.

In the absence of probative medical evidence containing a description of employment incident on August 20, 1996, and a reasoned opinion establishing causal relationship between the incident and the alleged injury, the Board finds that appellant has not met his burden of proof in this case.

The decision of the Office of Workers' Compensation Programs dated December 6, 1996 is affirmed.⁵

Dated, Washington, D.C.
February 18, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

⁴ The Board notes that, the record contains medical evidence that relates to a person other than appellant.

⁵ The Board notes that, subsequent to the Office's December 6, 1996 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).