

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN E. STEWART and DEPARTMENT OF DEFENSE,
DEFENSE DISTRIBUTION REGION WEST, Stockton, Calif.

*Docket No. 97-2028; Submitted on the Record;
Issued June 9, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

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 8, 1995, as alleged.

The Board has duly reviewed the case record in the present appeal and finds that the Office of Workers' Compensation Programs properly determined that appellant failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on December 8, 1995, 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 duty⁴ 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

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).

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. Appellant, a packer, claimed that on December 8, 1995, while “going out front gate and was hit from the back of my car.” However, by decision dated June 27, 1996, the Office found that the evidence was insufficient to establish that an injury resulted from the incident.

The Board finds that appellant has not established that the May 6, 1996 employment incident resulted in an injury. To support the claim, appellant submitted disability slips dated December 15, 1995, January 12, January 30 and March 31, 1996 by Dr. Thomas Chambers, a chiropractor; a February 7, 1996 report by him; and a February 9, 1996 attending physician’s report (Form CA-20) by Dr. Chambers. The Act specifies that chiropractors are only considered physicians to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. Since Dr. Chambers did not diagnose a subluxation based on x-rays, he may not be considered a physician and his reports do not constitute competent medical evidence. By letter dated May 9, 1996, the Office advised appellant of the type of evidence needed to establish his claim, but such evidence has not been submitted. Therefore, the Board finds that the evidence of record is insufficient to meet appellant’s burden of proof as it contains no medical evidence of injury.

The decision of the Office of Workers’ Compensation Programs dated June 27, 1996 is affirmed.⁷

Dated, Washington, D.C.
June 9, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁷ The Board notes that subsequent to the issuance of the Office’s decision and on appeal, appellant submitted evidence which was not previously before the Office. However, the Board may not consider such evidence for the first time on appeal. 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 pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.138(b).