

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KENNETH P. KELLER and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Richmond, Va.

*Docket No. 97-1465; Submitted on the Record;  
Issued March 19, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty.

On December 19, 1996 appellant, then a 48-year-old program analyst, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that on December 13, 1996, he sustained an injury to his lower back while moving a box of materials at work. Appellant described the nature of his injury as occasionally severe lower back pain, resulting in partial immobility and difficulty walking and using stairs. Appellant stopped work on December 16, 1996 and returned to work on December 18, 1996. In support of his claim, appellant submitted a handwritten note from Dr. John K. Starr, indicating that he examined appellant on January 6, 1997 for low back pain. Additionally, he noted appellant's work status as "full duty."

On January 21, 1997 the Office of Workers' Compensation Programs advised appellant that the information submitted with his claim was insufficient to establish that he sustained an injury on December 13, 1996. The Office further advised appellant that if he received any medical treatment for his alleged injury, he should arrange for the submission of the relevant medical records within 30 days. Moreover, appellant was advised of the specific type of information a physician's report should contain. Appellant was also asked to submit additional factual information regarding the circumstances of his injury and to provide a description of any prior back conditions and to submit all medical reports pertaining to those conditions. In response, appellant submitted Dr. Starr's January 6, 1997 treatment notes, as well as treatment notes from Dr. E.G. Alexander Jr., dated September 25, 1991 and February 3, 1992. Appellant also submitted additional factual information as requested.

By decision dated February 28, 1997, the Office denied appellant's claim on the basis that the evidence failed to establish that he sustained a work-related injury as alleged. The Office explained that Dr. Starr's January 6, 1997 treatment notes were insufficient to establish entitlement because he did not provide a diagnosis or include a history of the injury.

Additionally, the Office noted that Dr. Starr did not provide a medical explanation as to how the reported work incident caused or aggravated the claimed injury.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</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 under the Act, that an injury was sustained in the performance of duty, and that any disability or specific condition for which compensation is being claimed is causally related to the employment injury.<sup>2</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>3</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>4</sup> The second component is whether the employment incident caused a personal injury.<sup>5</sup> This latter component generally can be established only by medical evidence. To establish a causal relationship between the claimed condition, as well as any attendant disability, 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> An award of compensation may not be based upon surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish a causal relationship.<sup>7</sup>

In the instant case, the Office correctly noted that Dr. Starr's January 6, 1997 treatment notes did not include a diagnosis. In fact, he notes that upon physical examination, appellant was "entirely within normal limits. With respect to the history of the injury, Dr. Starr's January 6, 1997 treatment notes do not identify a specific employment-related injury on or about December 13, 1996, but merely indicate that "[a]pproximately 3 [to] 4 weeks ago, [appellant]

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *Elaine Pendleton*, *supra* note 2.

<sup>5</sup> *Id.*

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

<sup>7</sup> *Victor J. Woodhams*, *supra* note 3.

suffered a fairly benign injury.” In light of the fact that Dr. Starr did not relate any particular injury or condition to a specific work incident, his January 6, 1997 treatment notes do not rise to the level of rationalized medical opinion evidence. The remaining medical evidence of record documents appellant’s prior back conditions and predates his alleged injury of December 13, 1996 by more than four years. Consequently, this evidence is also insufficient to satisfy appellant’s burden.

In view of the absence of any rationalized medical opinion evidence, appellant has failed to meet his burden of demonstrating that he sustained an injury in the performance of duty. Accordingly, the Office properly denied appellant’s claim for compensation.

The February 28, 1997 decision of the Office of Workers’ Compensation Programs denying appellant compensation is hereby affirmed.

Dated, Washington, D.C.  
March 19, 1999

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member