

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TODD M. SAUNDERS and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION SERVICE, Miami, Fla.

*Docket No. 97-1721; Submitted on the Record;
Issued March 10, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established entitlement to wage-loss compensation based on his work-related injury of June 11, 1996.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet his burden of proof in establishing that his claimed time off from work was causally related to his accepted work-related injury.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim² including the fact that the individual is an "employee of the United States" within the meaning of the Act,³ that the claim was timely filed within the applicable time limitation period of the Act,⁴ 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.⁵

Establishing whether an injury, traumatic or occupational, was sustained in the performance of duty as alleged, *i.e.*, "fact of injury," and establishing whether there is a causal relationship between the injury and any disability and/or specific condition, for which compensation is claimed, *i.e.*, "causal relationship," are distinct elements of a compensation claim. While the issue of "causal relationship" cannot be established until "fact of injury" is established, acceptance of fact of injury is not contingent upon an employee proving a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed. An employee may establish that an injury occurred in the performance

¹ 5 U.S.C. §§ 8101-8193.

² See *Daniel R. Hickman*, 34 ECAB 1220 (1983).

³ *James A. Lynch*, 32 ECAB 216 (1980).

⁴ 5 U.S.C. § 8122.

⁵ See *Daniel R. Hickman*, *supra* note 2.

of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.⁶

In this case, appellant's medical evidence fails to establish that he was disabled as a result of his work-related injury. For example, a thoracic magnetic resonance imaging (MRI) scan taken on June 11, 1996 was within normal limits while an MRI of the cervical spine taken the same day revealed only mild degenerative disc disease at C5-6. Further, Dr. Dennis A. Tidwell, appellant's treating chiropractor, noted in a November 19, 1996 medical report that appellant's x-rays revealed spinal subluxation at C5. However, he failed to establish that appellant's condition was related to his work-related injury, or that the condition resulted in a disability from work. Indeed, Dr. Tidwell stated that appellant "should work only light duty, lifting nothing heavier than 20 pounds for the next 4 to 6 weeks." The Board finds that, inasmuch as appellant did not submit medical evidence which supports his claim that his work-related injury resulted in disability from further work, he has failed to establish entitlement to wage loss from the time of the work-related injury.⁷

The decisions of the Office of Workers' Compensation Programs dated January 22, 1997 and October 21, 1996 are affirmed.⁸

Dated, Washington, D.C.
March 10, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁶ As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; *see Frazier V. Nichol*, 37 ECAB 528 (1986).

⁷ By letter dated September 10, 1996, the Office of Workers' Compensation Programs advised appellant that he needed to submit additional information regarding his claim for wage loss.

⁸ The Board notes that subsequent to the Office's January 22, 1997 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).