

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICK M. MARTIN and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Richmond, VA

*Docket No. 98-1567; Submitted on the Record;
Issued November 4, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a back injury in the performance of duty on August 11, 1997.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a back injury in the performance of duty on August 11, 1997.

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, 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.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

⁴ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵ The term “injury,” as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.⁶

In the present case, appellant, then a 55-year-old general clerk, filed a traumatic injury claim alleging that he sustained a back injury when he lifted three large boxes at work on August 11, 1997. By decision dated October 27, 1997, the Office of Workers’ Compensation Programs denied appellant’s claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained an employment-related back injury on August 11, 1997. By decision dated February 17, 1998, the Office denied modification of its October 27, 1997 decision.

The Board notes that appellant did not submit sufficient medical evidence to establish that he sustained a back injury in the performance of duty on August 11, 1997. Appellant submitted a September 10, 1997 report in which Dr. James J. Reilly, an attending Board-certified internist, diagnosed “muscle strain due to vertebral degenerative disc disease.” This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on causal relationship.⁷ The report does not contain any indication that appellant sustained a traumatic back injury on August 11, 1997 due to lifting boxes at work.

In a report dated September 23, 1997, Dr. Reilly indicated that appellant had been under his care since August 12, 1997 when he presented with abdominal pain. The record also contains an August 12, 1997 note which indicates that appellant reported having abdominal pain for six months and the results of diagnostic testing obtained on August 19, 1997 which show that appellant has a probable renal cyst. These reports describe a condition pertaining to appellant’s abdominal region and also do not contain any opinion that he sustained an employment-related back injury on August 11, 1997.⁸

⁵ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

⁶ *Elaine Pendleton*, *supra* note 2; 20 C.F.R. § 10.5(a)(14).

⁷ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

⁸ Appellant submitted additional evidence after the Office’s February 17, 1998 decision, but the Board cannot consider such evidence for the first time on appeal; see 20 C.F.R. § 501.2(c).

The decisions of the Office of Workers' Compensation Programs dated February 17, 1998 and October 27, 1997 are affirmed.

Dated, Washington, D.C.
November 4, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member