

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BILLIE G. PICKENS and DEPARTMENT OF HOUSING & URBAN  
DEVELOPMENT, RICHMOND AREA OFFICE, Richmond, VA

*Docket No. 97-2233; Submitted on the Record;  
Issued September 23, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof in establishing that she sustained an injury in the performance of duty on February 3, 1997, as alleged.

On February 6, 1997 appellant, then a 35-year-old secretary, filed a notice of traumatic injury and claim for pay/compensation (Form CA-1) alleging that on February 3, 1997 she suffered an anxiety attack, hyperventilated, had neck and shoulder pain, could not breathe and had chest tightness as a result of her federal job duties. Appellant alleged that she was in a staff meeting when her supervisor, Mr. Day, became very enraged and began to scream and shout at her.

In an April 4, 1997 letter, Wanda S. Crouse stated that appellant was injured by falling onto the floor on February 3, 1997.

In a letter dated April 21, 1997, the Office of Workers' Compensation Programs requested that appellant submit medical evidence in support of her claim, including a physicians well-rationalized opinion regarding the causal relationship between appellant's claimed condition and factors of her employment. No medical evidence was received.

In a May 22, 1997 decision, the Office disallowed appellant's claim for compensation benefits finding that the evidence of record failed to establish that an injury was sustained as alleged.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty on February 3, 1997, as alleged.

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 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.<sup>2</sup> These are essential elements of each 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> In this case, the Office accepted that the incident occurred at the time, place and in the manner alleged. The Board finds that the evidence of record supports that the incident occurred, as alleged.

The second component is whether the employment incident caused a personal injury and generally can be established by only medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed 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>5</sup> In the present case, appellant failed to provide any medical evidence establishing that her alleged conditions are causally related to the employment incident of February 3, 1997. The Office advised appellant, by letter dated April 21, 1997, of the type of medical evidence needed to establish her claim, but she did not provide such evidence. Consequently, appellant has not submitted sufficient medical evidence to meet her burden of proof in establishing that she sustained an injury in the performance of duty on February 3, 1997.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 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> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

The May 22, 1997 decision of the Office of Workers' Compensation Programs is affirmed.<sup>6</sup>

Dated, Washington, D.C.  
September 23, 1999

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> The Board notes that appellant's appeal to the Board was accompanied by new medical and documentary evidence. The Board's jurisdiction on appeal is limited to a review of the evidence which was in the case record before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c). The Board may not review new evidence on appeal which was not considered by the Office in the decision. Therefore, the Board is precluded from reviewing this evidence. The record further reflects that appellant sought reconsideration before the Office on June 19, 1997, one day prior to the date the Board received her appeal. It is well established that the Board and the Office may not simultaneously have jurisdiction over the same issue in the same case; *see* 20 C.F.R. § 501.2(c); *Arlonia B. Taylor*, 44 ECAB 591 (1993). Consequently, the Office did not have jurisdiction over appellant's request for reconsideration during the pendency of this appeal. As such, the Office's decision dated July 30, 1997 is null and void. *Russell E. Lerman*, 43 ECAB 770, 772 (1992); *Jimmy W. Galetka*, 43 ECAB 432 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).