

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LINDA J. TALBERT and U.S. POSTAL SERVICE,  
POST OFFICE, Kansas City, MO

*Docket No. 99-2016; Submitted on the Record;  
Issued August 16, 2000*

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DECISION and ORDER

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

The issue is whether appellant established that she sustained an injury in the performance of duty on April 28, 1998.

On April 28, 1998 appellant, a 47-year-old distribution clerk, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that she sustained an injury to her right middle finger while in the performance of duty that day. She explained that she cut her finger with a screwdriver while she was attempting to change a lock on a post office box. Although appellant indicated that she was immediately treated for her injury at the employing establishment medical unit, no medical evidence accompanied her claim.

By letter dated March 29, 1999, the Office of Workers' Compensation Programs requested that appellant submit a medical report regarding the treatment she received for her finger injury on April 28, 1998. Appellant was further advised that the case would remain open for 30 days in order to submit the requested information. The Office did not receive the requested information.

In a decision dated April 28, 1999, the Office denied appellant's claim on the basis that she failed to establish that her condition was caused or aggravated by her employment.

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty on April 28, 1998.

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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.<sup>1</sup> The second

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<sup>1</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

component is whether the employment incident caused a personal injury.<sup>2</sup> This latter component generally can be established only by medical evidence.<sup>3</sup>

In the instant case, the Office properly denied appellant's claim based on her failure to submit probative medical evidence relevant to her claim of injury on April 28, 1998. Appellant did not submit any medical evidence in support of her claim nor is there any indication that she responded to the Office's March 29, 1999 request for information.<sup>4</sup> In view of the absence of any medical evidence diagnosing a condition causally related to the April 28, 1998 employment incident, appellant has failed to establish a *prima facie* claim that she sustained an injury in the performance of duty.

The April 28, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.<sup>5</sup>

Dated, Washington, D.C.  
August 16, 2000

Willie T.C. Thomas  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

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<sup>2</sup> *Id.*

<sup>3</sup> See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>4</sup> Appellant submitted additional medical evidence on appeal. Inasmuch as the Board's review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).

<sup>5</sup> On appeal, appellant submitted evidence not in the record. The Board cannot consider this for the first time on appeal. 20 C.F.R. § 501.2(c). This evidence will be returned to appellant so that he may submit it to the Office.