

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD M. LASKOWSKI and DEPARTMENT OF JUSTICE,
U.S. MARSHALS SERVICE, Columbia, SC

*Docket No. 98-2376; Submitted on the Record;
Issued February 25, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty.

On April 20, 1998 appellant, then a 45-year-old Deputy U.S. Marshal filed a notice of traumatic injury, Form CA-1, alleging that, on April 14, 1998, while en route to execute a federal warrant, he was involved in an automobile accident. He claimed he suffered a mild concussion and some neck and lower back pain. On the reverse of the form, appellant's supervisor indicated that appellant stopped work on Wednesday, April 15, 1998 and returned to work on Monday, April 20, 1998.

In a May 18, 1998 letter, the Office of Workers' Compensation Programs advised appellant that the information submitted in his claim was not sufficient to determine whether he was eligible under the Federal Employees' Compensation Act. The Office advised appellant of the additional medical and factual evidence needed to support his claim.

By decision dated July 2, 1998, the Office denied appellant's claim. The Office found that, while the evidence of file supported that appellant experienced the claimed accident, the evidence did not establish that a condition had been diagnosed in connection with the work factor. Therefore, it was determined that appellant did not sustain an injury, as alleged.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty as alleged.

An employee seeking benefits under the Act¹ has the burden of establishing that 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

¹ 5 U.S.C. §§ 8101-8193.

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 essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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.⁴ In this case, the Office acknowledged that the incident involving appellant, the automobile accident, occurred as alleged. The Board finds that the evidence of record supports this incident.

The second component is whether the employment incident caused a personal injury and generally can be established only by 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.⁵

In the instant case, it is not disputed that appellant experienced the claimed work factor, *i.e.*, he was involved in an automobile accident in the course of his employment with the U.S. Marshals Office. However, appellant has submitted no medical evidence establishing that he has, indeed, sustained any injury due to the automobile accident. On May 18, 1998 the Office advised appellant of the evidence needed to establish his claim. However, such evidence was not submitted prior to the Office's July 2, 1998 decision.⁶

As noted above, part of appellant's burden of proof includes the submission of medical evidence establishing that the claimed condition is causally related to employment factors. As appellant has not submitted such evidence, he has not met his burden of proof in establishing his claim.

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

³ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁶ In appellant's July 27, 1998 application for review to the Board, he submitted factual and medical evidence. The Board's jurisdiction is limited to evidence which was before the Office at the time it rendered the final decision. Inasmuch as this evidence was not considered by the Office, it cannot be considered on review by the Board. 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting such evidence to the Office as part of a reconsideration request.

The decision of the Office of Workers' Compensation Programs dated July 2, 1998 is hereby affirmed.

Dated, Washington, D.C.
February 25, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member