

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RANDY OVERBECK and DEPARTMENT OF VETERANS AFFAIRS,
REGIONAL OFFICE, Los Angeles, CA

*Docket No. 00-72; Submitted on the Record;
Issued November 14, 2000*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has established that he sustained an injury in the performance of duty on November 5, 1998.

On November 9, 1998 appellant, then a 48-year-old realty specialist team leader, filed a notice of traumatic injury and claim for compensation alleging that on November 5, 1998 while inspecting Veterans Administration held property he fell through a dry-rotted floor and reagravated a preexisting back and shoulder injury. He did not stop working.

In support of his claim, appellant submitted medical records dating August through December 1996 from Santa Monica Bay Family Physicians referencing a back and left shoulder strain that appellant sustained on August 27, 1996 when he slipped on water and fell in the men's room. Dr. Richard L. Zachrich, a Board-certified family practitioner, treated appellant for his back and shoulder strain. He noted that these conditions had resolved by September 3, 1996. The medical records further noted that appellant had a history of chronic lumbosacral disc disease and left sciatica following a 1979 injury.

In a series of treatment notes dated September 10 through October 23, 1998, Dr. Thomas P. Knapp, an orthopedic surgeon, reported that appellant was treated for a left arm injury he sustained while walking an 80-pound dog on a leash, when the dog yanked at the leash causing a pop in appellant's left antecubital region. Appellant was also apparently seen for neck and back pain following a car accident. He underwent surgery on October 2, 1998 for repair of the distal biceps.

In a treatment note dated November 10, 1998, Dr. Knapp noted that appellant was seen for a work-related injury that occurred on November 5, 1998 when appellant's left foot fell through the floor. Dr. Knapp stated "[appellant] is able to push out with his right foot. He is now complaining of back pain. He grabs hold of it with his left hand."

In a report dated December 16, 1998, Dr. Knapp indicated that appellant was under his care for three separate injuries. He noted that appellant originally injured his left upper extremity on September 16, 1998 at home, and that on October 19, 1998 appellant injured his back and neck in an auto accident. According to Dr. Knapp, appellant reinjured his back and neck while at work on November 5, 1998. He stated that appellant should not be lifting or standing for prolonged periods of time. He further advised against bending and climbing ladders.

A magnetic resonance imaging (MRI) scan of the lumbar spine dated February 13, 1999 revealed a left focal paracentral disc protrusion at L5-S1.

In a letter dated May 10, 1999, the Office advised appellant of the medical and factual evidence required to establish his claim.

In a decision dated June 10, 1999, the Office denied compensation on the grounds that appellant failed to establish that he sustained an injury causally related to the November 5, 1998 employment incident.

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on November 5, 1998.¹

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including 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 of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the

¹ Although appellant submitted additional evidence subsequent to June 10, 1999, the Board does not have jurisdiction to review evidence that was not before the Office at the time it issued its final decision. See 20 C.F.R. § 501(c). This decision does not preclude appellant from submitting his evidence to the Office along with a request for reconsideration.

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

In the instant case, the Board finds that appellant experienced the employment incident on November 5, 1998 at the time, place and in the manner alleged on his CA-1 form. However, appellant has submitted insufficient medical evidence to establish the nature of his injury and that his alleged medical condition is causally related to the employment injury. The Board notes that while appellant's treating physician Dr. Knapp indicated that appellant was treated for back pain after falling through the floor on November 5, 1998, he did not provide any diagnosis nor did he specifically relate appellant's symptoms to the employment incident. In the absence of a rationalized medical opinion of record addressing the nature of appellant's injury and its relation to the employment incident on November 5, 1998, the Board finds that appellant failed to carry his burden of proof in establishing causal relationship.

The decision of the Office of Workers' Compensation Programs dated June 10, 1999 is hereby affirmed.

Dated, Washington, DC
November 14, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

⁶ *Id.*; see 20 C.F.R. § 10.115 (1999).