

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOANN EBY and DEPARTMENT OF THE INTERIOR,  
FISH & WILDLIFE SERVICE, Washington, DC

*Docket No. 00-150; Submitted on the Record;  
Issued November 20, 2000*

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DECISION and ORDER

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

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on July 22, 1998, 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 July 22, 1998, 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, and that the claim was filed within the applicable time limitations of the Act.<sup>2</sup> An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,<sup>3</sup> that the injury was sustained while in the performance of duty,<sup>4</sup> and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>6</sup>

There is no dispute that appellant is a federal employee, that she timely filed her claim for compensation benefits and that the incident occurred as alleged. Appellant, a biological aid,

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>4</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *Steven R. Piper*, 39 ECAB 312 (1987).

<sup>6</sup> *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

claimed that she injured her neck and shoulder on July 22, 1998 while “vehicle was at an absolute stop at a red light. The passengers of the vehicle that was hit all heard the screech of tires when all of [a] sudden we were struck from the rear of the vehicle.” However, by decisions dated November 24, 1998 and May 7, 1999, the Office of Workers’ Compensation Programs found that the evidence of record was insufficient to establish that an injury resulted from the incident.

The Board finds that appellant has not established that the July 22, 1998 employment incident resulted in an injury. To support the claim, appellant submitted a March 26, 1999 statement from Joanne T. Patchak, the administrator of Doctors for Emergency Services at Christiana Hospital. Ms. Patchak enclosed a copy of an insurance form dated July 22, 1998, indicating that appellant was seen that day and diagnosis was only given as codes.

In this case, there is no rationalized medical opinion evidence supporting a causal relationship between appellant’s employment and any diagnosed conditions. In a March 26, 1999 statement from Ms. Patchak, a hospital administrator, she interpreted medical codes stating that appellant was diagnosed with neck and shoulder strain. As Ms. Patchak is not a physician, she cannot offer a medical opinion nor does her letter represent medical evidence. By letters dated October 21, 1998 and April 21, 1999, the Office advised appellant of the type of evidence needed to establish her claim, but such evidence has not been submitted. As appellant has failed to establish a *prima facie* claim by the submission of medical evidence necessary to substantiate her claim, she has failed to meet her burden of proof.

The decisions of the Office of Workers’ Compensation Programs dated May 7, 1999 and November 24, 1998 are affirmed.<sup>7</sup>

Dated, Washington, DC  
November 20, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> The Board notes that appellant submitted medical evidence with her appeal. As this evidence was not previously submitted to the Office for consideration prior to its decision of May 7, 1999, the evidence represents new evidence which cannot be considered by the Board. The Board’s jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Appellant may submit this evidence to the Office, together with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b).