

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ZEBEDEE HARDING and U.S. POSTAL SERVICE,  
POST OFFICE, Washington, DC

*Docket No. 99-2576; Submitted on the Record;  
Issued September 22, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that he sustained an injury in the performance of duty on June 7, 1999, as alleged.

On June 7, 1999 appellant, then a 46-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he sustained dizziness and pain in his upper back and right side, on that day when the vehicle he was driving was "hit in rear twice by other driver." On the reverse side of appellant's claim, the employing establishment indicated that the supervisor's knowledge about the facts of the incident agreed with appellant's statements.

By letter dated June 18, 1999, the Office of Workers' Compensation Programs advised appellant that he needed to submit additional information regarding his claim for compensation, including a detailed narrative medical opinion from his doctor explaining whether a causal relationship between appellant's medical condition and the alleged injury existed.

By decision dated July 23, 1999, the Office found the evidence of record insufficient to establish that a specific event, incident or exposure occurred at the time, place and in the manner alleged and that appellant sustained an employment-related injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained an injury in the performance of duty on June 7, 1999.

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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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 the essential elements of each and every 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> An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. He has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. However, his statement alleging that an injury occurred at a given time and manner is of great probative value and will stand unless refuted by substantial evidence.<sup>5</sup>

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.<sup>6</sup>

Regarding the first component, appellant in this case stated on his claim form that on June 7, 1999 he sustained dizziness and pain in his upper back and right side when the vehicle he was driving was hit twice. The employing establishment supported appellant's statements of the occurrence.

The Board finds that appellant's statements regarding the incident of June 7, 1999 and the employing agency's affirmance of the facts as alleged by appellant provide a consistent history of the incident sufficient to establish that the incident occurred. Thus, the Board finds that the contemporaneous evidence of record supports that the incident occurred at the time, place and in the manner alleged.

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

<sup>3</sup> *Daniel J. Overfield*, 42 ECAB 718 (1991).

<sup>4</sup> *Elaine Pendleton*, *supra* note 2.

<sup>5</sup> *Carmen Dickerson*, 36 ECAB 409 (1985).

<sup>6</sup> *John M. Tornello*, 35 ECAB 234 (1983); 20 C.F.R. § 10.11(a).

Regarding the second component, however, the Board finds that appellant has failed to establish that the incident caused a medical condition.

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to the claimant's diagnosed condition. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established factor of employment.<sup>7</sup>

A review of the record reveals that appellant failed to submit medical evidence to support that he sustained an injury on June 7, 1999 while in the performance of duty. Since appellant did not submit supporting medical evidence, he has not established an injury in the performance of duty.<sup>8</sup>

The July 23, 1999 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Dated, Washington, DC  
September 22, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>7</sup> *Ern Reynolds*, 45 ECAB 690 (1994); *Melvina Jackson*, 38 ECAB 443, 449 (1987); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

<sup>8</sup> The Board notes that, subsequent to the Office's July 23, 1999 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).