

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES T. LEE, III and DEPARTMENT OF THE NAVY,
PUDGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 00-852; Submitted on the Record;
Issued February 13, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has met his burden of proof to establish that he sustained an injury to his left elbow in the performance of duty.

On July 8, 1999 appellant, then a 43-year-old shipfitter, filed a notice of occupational disease alleging that the tendinitis in his left elbow was caused by the use of heavy tools for eight hours a day at work. Appellant stated: "My employment requires use of heavy tools, working heavy steel materials. I believe that prolonged use of heavy vibrating tools in awkward positions has damaged the connective tissues in my arms resulting in chronic tendinitis." Appellant submitted his federal employment application, a preemployment examination and a job description, but did not submit any medical evidence to support his claim.¹

On July 19, 1999 the Office of Workers' Compensation Programs informed appellant that additional information was needed. The Office specifically requested that appellant provide a comprehensive medical report from his treating physician which described his symptoms and diagnosis, and contained the doctor's opinion, with medical reasons, on the cause of his condition. On July 23, 1999 the Office received preemployment medical evaluations dated January 15, 1987.²

¹ Appellant claims that he had an accepted injury from 1992 for right lateral tendinitis, No. 14319516. Appellant stated that since he has not been able to use his right arm, his left arm has been doing all the work and this is why he has developed tendinitis in his left elbow. A report of physical limitation, received on July 14, 1999, stated that appellant was to avoid using vibrating tools.

² On July 29, 1999 the Office received information from appellant's supervisor stating that "this employee has not been assigned work with vibrating tools for at least one and one half years, possibly since 1997, and has physical limits reflecting this. He continues to work within physical limits in his shop performing inspection work and layout work."

By decision dated September 24, 1999, the Office denied appellant's claim on the grounds that, while appellant experienced the alleged employment factors, he failed to submit medical evidence establishing that his tendinitis was caused by his work duties.³

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury to his left elbow in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act⁴ 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 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.⁵ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

In this case, appellant submitted a complete factual statement identifying employment factors alleged to have caused his condition, but did not submit any medical evidence to support his claim. Thus, appellant has failed to meet his burden of proof in establishing that his left elbow tendinitis resulted from employment factors.

³ On appeal, appellant submitted additional evidence which was not before the Office at the time it issued its September 24, 1999 decision. The Board has no jurisdiction to review this evidence for the first time on appeal. *See* C.F.R. § 001.2(c). Appellant may submit this evidence to the district Office with a formal request for reconsideration.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁷ *Vicky L. Hannis*, 48 ECAB 538 (1997).

The decision of the Office of Workers' Compensation Programs dated September 24, 1999 is affirmed.

Dated, Washington, DC
February 13, 2001

Michael J. Walsh
Chairman

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member