

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARL SMITHOOVER and DEPARTMENT OF VETERANS AFFAIRS,
CANANDAIGUA VETERANS HOSPITAL, Canandaigua, NY

*Docket No. 00-182; Submitted on the Record;
Issued July 20, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury to his back in the performance of duty.

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office of Workers' Compensation Programs dated June 7, 1999 and finalized on June 11, 1999 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.¹

¹ 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred. *Elaine Pendleton*, 40 ECAB 1143 (1989). The second component is whether the employment incident caused a personal injury. This latter component generally can be established only by medical evidence. *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983). In the instant case, appellant has failed to meet his burden of demonstrating that he sustained an injury to his back.

The decision of the Office of Workers' Compensation Programs dated June 7, 1999 and finalized on June 11, 1999 is hereby affirmed.

Dated, Washington, DC
July 20, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member