

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES A. HARVEY and DEPARTMENT OF JUSTICE,
BUREAU OF PRISONS, Alderson, WV

*Docket No. 00-2435; Submitted on the Record;
Issued July 6, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury while in the performance of duty.

On February 17, 2000 appellant, a 45-year-old physician's assistant, filed a traumatic injury claim alleging that on or about January 20, 2000 he contracted bronchitis and legionnaires' pneumonia while in the performance of duty. No medical evidence accompanied appellant's claim.

By letters dated May 18, 2000, the Office of Workers' Compensation Programs requested that appellant submit additional medical and factual information. Appellant was further advised that the case would remain open for 30 days for him to submit the requested information. Appellant did not timely respond to the Office's request for additional information.

In a decision dated June 22, 2000, the Office denied appellant's claim on the basis that he failed to establish that he sustained an injury.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury while in the performance of duty.

A claimant seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is being claimed is causally related to the employment injury.²

¹ 5 U.S.C. §§ 8101-8193.

² See *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996); *Melinda C. Epperly*, 45 ECAB 196 (1993); *Elaine Pendleton*, 40 ECAB 1143 (1989).

In this case, while appellant alleged that he sustained a traumatic injury³ on or about January 20, 2000, he did not provide any medical evidence demonstrating that he sustained a personal injury as a result of his alleged employment exposure.⁴ The record on appeal is clearly insufficient to establish “fact of injury.”⁵ Accordingly, appellant has failed to demonstrate that he sustained an injury while in the performance of duty.

The June 22, 2000 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 6, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

³ A “traumatic injury” is defined as “a condition of the body caused by a specific event or incident, or a series of events or incidents, within a single workday or shift.” The condition “must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.” 20 C.F.R. § 10.5(ee).

⁴ In order to determine whether an employee sustained a traumatic 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. *John J. Carlone*, 41 ECAB 354 (1989).

⁵ The record includes evidence that was received by the Office subsequent to the issuance of its June 22, 2000 decision. Inasmuch as the Board’s review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant’s newly submitted evidence. 20 C.F.R. § 501.2(c).