

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BRIAN V. CLOUGH and U.S. POSTAL SERVICE,  
POST OFFICE, Belfast, ME

*Docket No. 00-2291; Submitted on the Record;  
Issued June 7, 2001*

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DECISION and ORDER

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

The issue is whether appellant sustained an injury in the performance of duty on October 26, 1999.

Appellant, a 52-year-old letter carrier, filed a traumatic injury claim on October 26, 1999 alleging that he hurt his head, right elbow and buttock while "backpedaling" to get away from an approaching dog. On the date of injury, appellant sought emergency treatment. A hospital form noted a "head injury" and released appellant to return to his regular duties as of October 27, 1999. The treating physician, however, did not attribute appellant's "head injury" to the October 26, 1999 employment incident.

By letter dated November 2, 1999, the Office of Workers' Compensation Programs advised appellant that it required additional medical evidence regarding his claim. The Office explained that the medical evidence submitted with the claim did not include a diagnosis. Additionally, the Office noted that the physician who treated appellant on the date of his injury checked the "no" box in response to whether the condition found was caused or aggravated by the described employment activity. Accordingly, the Office requested that appellant submit an appropriate medical report within 30 days. There is no indication from the record that appellant responded to the Office's request for additional medical evidence.

By decision dated December 7, 1999, the Office denied appellant's claim on the basis that he failed to establish fact of injury. The Office explained that, while the evidence supported that appellant experienced the claimed event, the record failed to demonstrate that a condition had been diagnosed in connection with the October 26, 1999 employment incident.

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on October 26, 1999.

A claimant seeking compensation under the Federal Employees' Compensation Act<sup>1</sup> 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.<sup>2</sup>

While appellant alleged that he sustained a traumatic injury<sup>3</sup> to his head, right elbow and right buttock while in the performance of duty, the medical evidence accompanying appellant's claim is of little probative value in determining the existence, extent and cause of the claimed employment-related injuries. Other than noting a "head injury," the October 26, 1999 report form did not provide a specific medical diagnosis.

Furthermore, this report did not attribute appellant's "head injury" to the October 26, 1999 employment incident. To the contrary, the report clearly indicates that appellant's "head injury" was neither caused nor aggravated by the October 26, 1999 employment incident. As such, the record on appeal is clearly insufficient to establish fact of injury.<sup>4</sup> Accordingly, appellant has failed to demonstrate that he sustained an injury while in the performance of duty on October 26, 1999.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>3</sup> 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).

<sup>4</sup> 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*, *supra* note 2. The second component is whether the employment incident caused a personal injury. *John J. Carlone*, 41 ECAB 354 (1989).

The December 7, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
June 7, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member