

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of JAMES B. SHALLOW and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Milwaukee, WI

*Docket No. 00-1413; Submitted on the Record;  
Issued March 7, 2001*

---

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof in establishing that he sustained an injury on November 27, 1998 causally related to factors of his employment; and (2) whether the Office of Workers' Compensation Programs acted within its discretion in denying appellant's request for an oral hearing.

On October 5, 1999 appellant, then a 60-year-old clerk, filed a traumatic injury claim alleging that he sustained a rotator cuff tear on November 27, 1998 when he lifted a box at work.

By letter dated October 29, 1999, the Office advised appellant that he needed to submit additional information regarding his claim, including a rationalized medical report establishing that his rotator cuff tear was causally related to the incident at work on November 27, 1998.

No further information was received by the Office.

By decision dated December 8, 1999, the Office denied appellant's claim on the grounds that there was no medical evidence of record establishing that he sustained an injury causally related to the November 27, 1998 work incident.

By letter dated January 8, 2000, postmarked January 10, 2000, appellant requested an oral hearing.

By decision dated March 3, 2000, the Office's Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that his request was not timely made within 30 days of the date of issuance of the Office's December 8, 1999 decision and on the grounds that the issue in the case, causal relationship, could be resolved equally well by a request for reconsideration and the submission of additional evidence.

The Board finds that appellant failed to meet his burden of proof in establishing that he sustained an injury on November 27, 1998 causally related to factors of his employment.

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 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. These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>2</sup>

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.<sup>3</sup>

In this case, the Office accepted that the incident on November 27, 1998 occurred as alleged. However, appellant provided no medical evidence establishing that he sustained any disability or medical condition as a result of the employment incident. Therefore, he failed to meet his burden of proof in establishing that he sustained an injury on November 27, 1998 causally related to factors of his employment.

The Board further finds that the Office acted within its discretion in denying appellant's request for an oral hearing.

The Act requires that a claimant requesting a hearing before an Office hearing representative must make such a request within 30 days after the date of issuance of the decision he or she wishes to have reviewed.<sup>4</sup> Under the regulations implementing this section, the date the request is filed is determined by the postmark of the request.<sup>5</sup> In this case, the 30-day period for determining the timeliness of appellant's hearing request would commence on December 9, 1999 the date following the issuance of the Office's December 8, 1999 decision denying his claim. The 30-day period expired as of January 7, 2000. Appellant's request for a hearing was postmarked January 10, 2000. Therefore, his request for a hearing was not timely filed. Despite the untimeliness of appellant's request for a hearing, the Office exercised its discretion and determined that the issue in the case, a medical issue, could be resolved equally well by a request

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Shirley A. Temple*, 48 ECAB 404 (1997).

<sup>3</sup> *Id.* at 407.

<sup>4</sup> 5 U.S.C. § 8124(b)(1).

<sup>5</sup> 20 C.F.R. § 10.616(a) (1999).

for reconsideration and the submission of additional evidence. Therefore, the Office acted within its discretion in denying appellant's request for a hearing.

The decisions of the Office of Workers' Compensation Programs dated March 3, 2000 and December 8, 1999 are hereby affirmed.

Dated, Washington, DC  
March 7, 2001

Michael J. Walsh  
Chairman

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member