

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CURTIS SCOTT and DEPARTMENT OF DEFENSE, DEFENSE  
COMMISSARY AGENCY, ATHENS COMMISSARY, Athens, GA

*Docket No. 00-2640; Submitted on the Record;  
Issued November 14, 2001*

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DECISION and ORDER

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

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

On September 21, 1999 appellant, then a 45-year-old store worker, filed a traumatic injury claim assigned number 06-0741073 alleging that on September 18, 1999 as he reached towards the back of the cooler to pull a couple of gallons of milk forward, he experienced a sharp pain down his right and left legs, and across his lower back and buttocks. Appellant's claim was accompanied by factual and medical evidence.

By letter dated December 1, 1999, the Office of Workers' Compensation Programs advised appellant to submit factual and medical evidence supportive of his claim. In response, appellant submitted medical evidence.

By decision dated January 21, 2000, the Office found the evidence of record sufficient to establish that appellant actually experienced the claimed event, but insufficient to establish that appellant sustained a medical condition causally related to the September 18, 1999 employment incident. In a February 22, 2000 letter, appellant, through his counsel, requested reconsideration of the Office's decision accompanied by factual and medical evidence.

By decision dated June 6, 2000, the Office denied appellant's request for modification based on a merit review of the claim.<sup>1</sup>

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<sup>1</sup> The Board notes that, subsequent to the Office's June 6, 2000 decision, the Office received medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</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 limitations 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.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.<sup>5</sup> In this case, the Office accepted that appellant experienced the incident on September 18, 1999 as alleged. The Board finds that the evidence of record supports this incident.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.<sup>6</sup>

Regarding the second component, the undated medical reports of Dr. Timothy B. Gibson, a Board-certified family practitioner, represent the only medical evidence of record, which addressed whether appellant sustained an injury due to the September 18, 1999 employment incident. In his undated attending physician's report (Form CA-20), Dr. Gibson provided the date of injury as September 18, 1999, a description of the injury that appellant reached over to pull gallons of milk and felt pain down his lower back and legs, and a diagnosis of possible herniated disc. Dr. Gibson indicated that appellant's condition was caused or aggravated by an employment activity by placing a checkmark in the box marked "yes." Similarly, in an undated form issued by the employing establishment, authorization for examination and/or treatment (Form CA-16), Dr. Gibson provided the date of appellant's injury, a description of the injury that appellant experienced pain in the buttocks down to his legs and a diagnosis of disc herniation at

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Daniel J. Overfield*, 42 ECAB 718 (1991).

<sup>5</sup> *Elaine Pendleton*, *supra* note 3.

<sup>6</sup> *See John M. Tornello*, 35 ECAB 234 (1983); 20 C.F.R. § 10.110(a).

LS-S1. He indicated that appellant's condition was caused or aggravated by the described employment activity by placing a checkmark in the box marked "yes." The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>7</sup> The Board finds that Dr. Gibson's reports are insufficient to establish appellant's burden inasmuch as they fail to provide any rationale explaining how or why appellant's condition was caused by the September 18, 1999 employment incident. Further, Dr. Gibson's undated Form CA-20 indicating that appellant had a "possible" herniated disc failed to provide a specific diagnosis.

Inasmuch as there is no rationalized medical evidence of record establishing that appellant sustained an injury due to the September 18, 1999 employment incident, the Board finds that appellant has failed to satisfy his burden of proof in this case.

The June 6 and January 21, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
November 14, 2001

Michael J. Walsh  
Chairman

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).