

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARZENE V. BUSTOS and DEPARTMENT OF THE INTERIOR,  
BUREAU OF RECLAMATION, Billings, MT

*Docket No. 00-2645; Submitted on the Record;  
Issued October 16, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained an injury in the performance of duty.

On October 25, 1999 appellant, then a 42-year-old office automation clerk/hydrologic aide, filed a traumatic injury claim alleging that on August 26, 1999 the muscles on the left side of her neck cramped during required yoga exercises.

By decision dated May 12, 2000, the Office of Workers' Compensation Programs found the evidence of record insufficient to establish that appellant sustained an injury in the performance of duty.<sup>1</sup>

The Board finds that appellant has failed to establish that she 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

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<sup>1</sup> Subsequent to the Office's May 12, 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. 20 C.F.R. § 501.2(c)(1); *see Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952). 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).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

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

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 claimed accident 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> In support of her claim, appellant submitted medical reports from Dr. Patrick J. Cahill, a Board-certified neurologist and appellant's treating physician, indicating that she sustained muscular neck pain, back pain and cramping. Dr. Cahill stated that no trauma other than isometric tensing exercises seemed to have been the trigger mechanism. Dr. Cahill's diagnosis of muscular neck pain is based on appellant's subjective pain. Dr. Cahill attributed appellant's neck pain to her isometric tensing exercises.

In further support of her claim, appellant submitted treatment notes and reports from her physical therapist, Bruce Wiley. Dr. Cahill referred appellant for a six-week physical therapy program. The Board finds that the treatment notes and reports of appellant's physical therapist are of no probative medical value inasmuch as a physical therapist is not a physician under the Act and therefore is not competent to give a medical opinion.<sup>7</sup> Nonetheless, the physical therapist's reports tend to support the validity of the muscular neck injury and its severity sustained by appellant.

Inasmuch as appellant has failed to submit rationalized medical evidence establishing that she sustained an injury in the performance of duty, she has not satisfied her burden of proof.

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

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

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

<sup>7</sup> 5 U.S.C. § 8101(2); *see also Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983).

The May 12, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
October 16, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member