

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MEGAN SHAW and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Boise, ID

*Docket No. 02-737; Submitted on the Record;
Issued August 8, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
COLLEEN DUFFY KIKO

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on or about July 20, 2001.

On July 31, 2001 appellant, then a 21-year-old health technician, filed a notice of traumatic injury and claim for continuation of pay/compensation alleging that on July 20, 2001, when reporting to work, she turned around and her right hand hit a brick wall and that, as a result thereof, she sustained an injury to her right hand.

By letter dated October 19, 2001, the Office of Workers' Compensation Programs requested that appellant respond to various questions propounded by the Office.¹ She did not file a timely response to these questions. By decision dated December 7, 2001, the Office denied appellant's claim finding that she had not established that she sustained an injury as alleged.

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

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.² 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.³ An employee may establish that an injury

¹ The responses to these questions were submitted for the first time on appeal. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 CFR § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

² *See John J. Carlone*, 41 ECAB 354 (1989).

³ *Id.* For a definition of injury, *see* 20 C.F.R. § 10.5(a)(14).

occurred in the performance of duty as alleged but fail to establish that his or her disability and/or specific condition for which compensation is claimed are causally related to the injury.

In the case at hand, appellant made a brief statement on her claim for compensation form alleging that she injured her right hand when she hit a wall during the course of her federal employment. There is no documentation at all supporting appellant's claim. She did not submit statements from witnesses, nor did she submit a personal statement. The Office propounded questions to appellant, but she failed to respond to these questions in a timely manner. As appellant has failed to meet her burden to show that she experienced an employment incident at the time, place and in the manner alleged, she has failed to establish her entitlement to benefits.

The decision of the Office of Workers' Compensation Programs dated December 7, 2001 is hereby affirmed.

Dated, Washington, DC
August 8, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member