

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PATRICIA E. SMITH and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Cleveland, OH

*Docket No. 01-2206; Submitted on the Record;  
Issued December 9, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury to her right elbow in the performance of duty.

On January 29, 2001 appellant, then a 50-year-old rehabilitation therapy assistant, filed a notice of traumatic injury and claim for continuation of pay/compensation, Form CA-1, alleging that, on January 8, 2001, she hit her right elbow on a desk, which caused an injury to her elbow.<sup>1</sup> On the reverse of the form, appellant's supervisor indicated that appellant stopped working on January 25, 2001.

Evidence of record included a report of accident form, filed by appellant's supervisor on January 29, 2001, and a narrative account of the incident and injury, submitted by appellant, dated February 28, 2001. Additional evidence of record includes an employee's duty status report, dated April 11, 2001, and signed by Dr. Lovette V. Phillips, an orthopedist, and an attending physician's report, also signed by Dr. Phillips, dated April 13, 2002. Dr. Phillips diagnosed appellant's condition as "tend[i]nitis right upper extremity, cervical radiculopathy." He indicated that appellant's injury was caused by employment factors by checking a box on the report.

In an April 18, 2001 letter, the Office of Workers' Compensation Programs advised appellant that the information submitted was insufficient to establish whether she was eligible for benefits under the Federal Employees' Compensation Act.<sup>2</sup> The Office advised appellant of the additional medical and factual evidence needed to support her claim. In particular, appellant was

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<sup>1</sup> Appellant's claim was originally accepted by the employing establishment, and was in a payable status for limited medical expenses. The employing establishment did not challenge appellant's claim until appellant's physician indicated that appellant needed physical therapy for tendinitis and cervical radiculopathy.

<sup>2</sup> 5 U.S.C. §§ 8101-8103.

advised to provide a physician's opinion, with medical reasons for such opinion, as to how the work incident caused or aggravated the claimed injury.

In response to the Office's letter, appellant forwarded a letter from Dr. Phillips, dated May 14, 2001. Dr. Phillips reported that appellant suffered from tenderness from her right shoulder to her forearm, with palpation. He opined that, when appellant hit her elbow, it could have caused a nerve entrapment or tendinitis, despite negative x-ray findings.

By decision dated May 25, 2001, the Office denied appellant's claim. The Office found that, while appellant experienced the claimed accident, she failed to provide medical evidence sufficient to establish a relationship between the January 8, 2001 work incident and her medical condition.

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

An employee seeking benefits under the Act has the burden of establishing that 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 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>

The second component is whether the employment incident caused a personal injury and generally can only be established 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 the instant case, there is no dispute that appellant is an employee, or that she hit her right elbow on a desk at work on January 8, 2001. However, there is insufficient medical evidence to establish that this action caused or aggravated a medical condition.

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

<sup>4</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

<sup>6</sup> *See* 20 C.F.R. § 10.11(a); *John M. Tornello*, 35 ECAB 234 (1983).

In this case, appellant has been diagnosed with right upper extremity tendinitis and cervical radiculopathy. However, there is insufficient evidence to establish that she sustained the injury on January 8, 2001. The medical reports from Dr. Phillips established the diagnosis of upper extremity tendinitis and cervical radiculopathy, they do not support appellant's contention that she sustained these injuries on January 8, 2001. Although Dr. Phillips' April 13, 2001 report supported causal relationship with a checkmark, the Board has held that a checkmark in support of causal relationship is insufficient to establish a claim in the absence of medical rationale explaining the basis of the doctor's decision.<sup>7</sup> No medical rationale supporting the doctor's causal relationship opinion is contained in the report. Additionally, in his May 14, 2001 letter, Dr. Phillips opined that, when appellant hit her elbow, it "could have caused a nerve entrapment or tendinitis despite a negative x-ray." As appellant has not submitted medical evidence establishing any specific injury on January 8, 2001, she has not met her burden of proof in establishing that her injuries are causally related to her federal employment.

The decision of the Office of Workers' Compensation Programs dated May 25, 2001 is affirmed.

Dated, Washington, DC  
December 9, 2002

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> *Alberta S. Williamson*, 47 ECAB 569 (1996).