

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREDDY C. HARDY and U.S. POSTAL SERVICE,
HIGHLAND HILLS STATION, Dallas, TX

*Docket No. 02-921; Submitted on the Record;
Issued December 24, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury on August 24, 1998 as alleged.

Appellant, a 63-year-old distribution clerk, filed a notice of traumatic injury on September 14, 1998 alleging that on August 24, 1998 he injured the right side of his neck and shoulder "while working flats." Appellant's supervisor stated that appellant did not work on August 24, 1998 and that he had a physician's appointment regarding a July 21, 1998 employment injury on that date.

The Office of Workers' Compensation Programs requested additional factual and medical evidence by letter dated November 6, 1998. Appellant responded and indicated that his current condition was due to his July 21, 1998 employment injury. By decision dated June 1, 1999, the Office denied appellant's claim finding that he failed to establish that the employment incident occurred as alleged.

Appellant requested an oral hearing on June 15, 1999. Appellant testified at the oral hearing on October 27, 1999 and stated that he was not at work on August 24, 1998 that he sought medical treatment on that date for his previously filed claim for neck and shoulder injury and that he filed the September 14, 1998 traumatic injury claim in order to receive medical treatment due to his previously alleged neck and shoulder injuries. By decision dated May 15, 2000, the hearing representative denied appellant's claim finding that he failed to establish that he sustained an injury on August 24, 1998, as alleged.¹

The Board finds that appellant failed to meet his burden of proof in establishing that he sustained an injury on August 24, 1998.

¹ Following the hearing representative's May 15, 2000 decision, appellant submitted additional new evidence to the Office. As the Office did not consider this evidence in reaching a final decision, the Board may not review it for the first time on appeal. 20 C.F.R. § 501.2(c).

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.² The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

Although appellant filed a claim on September 14, 1998 alleging that he sustained a traumatic injury on August 24, 1998 in his later communications to the Office, appellant made clear that he was not in fact claiming that he sustained a new traumatic injury on that date. Appellant testified at his oral hearing that his supervisor had explained that he was not at work on that date. Appellant stated that he did not remember why he used the date of August 24, 1998, in filing his latest claim, other than the fact that he sought medical treatment on that date for his neck and shoulder condition, for which he had previously filed a claim with the Office³ and that he believed that in order to receive treatment he must file a claim.

As noted above, appellant has the burden of proof to establish the essential elements of his claim for traumatic injury, including the fact that the injury occurred at the time and in the manner alleged. During his oral hearing, appellant specifically denied that his neck and shoulder condition were due to any employment activity on August 24, 1998 as previously alleged. As there is no evidence that appellant sustained an injury on the date in question, the Office properly denied appellant's claim for a traumatic injury on this date. However, the Board notes that appellant refined his claim during the oral hearing to indicate that he was requesting medical treatment on August 24, 1998 due to a previously claimed neck and shoulder condition. As the current case record has not been combined with that claim, numbered 16319508 by the Office, the Board cannot review this issue on appeal and cannot determine whether appellant is entitled to medical benefits for a neck and shoulder condition arising in July 1998.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ Appellant requested that the Board review a separate claim, assigned number 16319508 by the Office, on August 21, 2000. This claim was docketed as number 00-2691. In an order dated March 22, 2002, the Board dismissed appeal number 00-2691 on the grounds that there was no adverse decision issued by the Office in claim number 16319508 within one year of the date of the August 21, 2000 appeal to the Board.

The May 15, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 24, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member