

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM A. TACCINO and U.S. POSTAL SERVICE,  
POST OFFICE, Baltimore, MD

*Docket No. 01-1561; Submitted on the Record;  
Issued February 7, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a back, shoulder or cardiac condition in the performance of duty on September 21, 1999.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a back, shoulder or cardiac condition in the performance of duty on September 21, 1999.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</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 limitation 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>2</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.<sup>4</sup> Second, the employee must

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

<sup>4</sup> *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>5</sup> The term “injury” as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.<sup>6</sup>

On November 17, 1999 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim alleging that he sustained shoulder, back and cardiac condition when his vehicle was stopped by a Maryland police officer while he was delivering mail on that date. Appellant claimed that he sustained the shoulder and back injuries because the officer, Gary Resh, suddenly cut in front of his vehicle and caused him to stop abruptly. He alleged that he sustained a stress-related cardiac injury because Officer Resh used abusive language and engaged in threatening movements which included running towards his car. Appellant also indicated that he was upset because he felt that he was wrongly stopped for having dealer plates on his vehicle and that he had previous negative encounters with Officer Resh.<sup>7</sup>

By decision dated February 23, 2000, the Office of Workers’ Compensation Programs denied appellant’s claim on the grounds that he did not submit sufficient evidence to establish that he sustained an injury in the performance of duty on September 21, 1999. By decision dated and finalized January 31, 2001, an Office hearing representative affirmed the Office’s February 23, 2000 decision.

The Board finds that appellant has established an employment factor with respect to being stopped by Officer Resh while he was delivering mail in his postal vehicle on September 21, 1999. However, appellant did not establish various assertions regarding this incident such as his claim that he had to stop suddenly and that Officer Resh acted abusively towards him. The record contains evidence which indicates that the Maryland State Police investigated the incident on September 21, 1999 and determined that appellant’s use of dealer tags on his postal vehicle was unlawful; this evidence does not contain any indication that Officer Resh acted abusively as alleged.<sup>8</sup> The record also indicates that two supervisors arrived on the scene shortly after appellant was stopped by Officer Resh and observed that appellant was speaking loudly with a “boisterous overtone.”<sup>9</sup>

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a back, shoulder or cardiac condition due to the September 21, 1999 employment incident. Appellant submitted numerous medical reports in support of his claim. Most of these reports relate to a medical work-up appellant underwent with respect to his cardiac condition in

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<sup>5</sup> *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

<sup>6</sup> *Elaine Pendleton*, *supra* note 2; 20 C.F.R. § 10.5(a)(14).

<sup>7</sup> Appellant claimed that between 1989 and 1991 Officer Resh had “stalked” him because he had reported him to authorities for engaging in improper conduct including the use of abusive language.

<sup>8</sup> It was noted, however, that Officer Resh should have issued a warning rather than a written ticket.

<sup>9</sup> Appellant filed a complaint against Officer Resh with Maryland authorities, but the record does not contain any determination regarding the complaint.

September and October 1999; the reports indicate that appellant's cardiac condition was essentially normal. None of the reports contain any opinion that appellant sustained a medical condition due to the September 21, 1999 employment incident. Thus, these reports are of limited probative value on the relevant issue of the present case because they do not contain an opinion on causal relationship.<sup>10</sup>

For these reasons, appellant did not meet his burden of proof to establish that he sustained a back, shoulder or cardiac condition in the performance of duty on September 21, 1999.

The January 31, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
February 7, 2002

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>10</sup> See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).