

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN A. OLIVER and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Muskogee, OK

*Docket No. 03-697; Submitted on the Record;  
Issued June 23, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issue is whether appellant sustained an injury in the performance of duty on September 27, 2002.

The record reveals that on October 23, 2002 appellant, then a 46-year-old nursing assistant, filed a notice of traumatic injury (Form CA-1), alleging that, on September 27, 2002, while performing his duties he hurt his back lifting a patient into bed.<sup>1</sup>

By letter dated December 2, 2002, the Office of Workers' Compensation Programs requested that appellant provide additional information. Specifically, a detailed description of how the injury occurred, the immediate effects of the injury, why he delayed seeking medical attention, any prior similar injuries and particularly, a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury. The Office explained that the physician's opinion was crucial to his claim and allotted him 30 days to submit the requested information.

On December 3, 2002 the Office received a November 22, 2002 duty status report completed by Dr. Harold Boos, a chiropractor, who noted that appellant injured himself when assisting a patient. He diagnosed thoracic and lumbosacral conditions and indicated by a check mark that the diagnosed conditions were related to the history given.

On December 10, 2002 the Office received November 18 and December 2, 2002 authorizations for absence from Dr. Boos, both of which stated that appellant was unable to work until December 11, 2002. Also received was a November 26, 2002 report of contact on which appellant's supervisor noted a telephone call with Dr. Boos, who stated that appellant had reinjured his back and would not be able to return to work for one week.

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<sup>1</sup> The Board notes that the actual Form CA-1 is not contained in the case record.

By decision dated January 3, 2003, the Office denied appellant's claim for failure to establish fact of injury. The Office found that appellant was a federal employee, who filed a timely claim for compensation and that the claimed incident occurred at the time, place and in the manner alleged. However, the Office found that no medical evidence was submitted to demonstrate that appellant sustained an injury as a result of the incident. The Office explained that the medical evidence submitted was from Dr. Boos, a chiropractor, and that since he did not diagnose a subluxation of the spine as demonstrated by x-ray to exist, he is not considered a physician under the Federal Employees' Compensation Act in this case and his reports were not considered competent medical evidence.<sup>2</sup> Therefore, fact of injury was not established.<sup>3</sup>

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an employment-related injury to his back on September 27, 2002.

An employee seeking benefits under the Act 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 filed within the applicable time limitations 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>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>5</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>6</sup> In the instant case, there is no dispute that the claimed incident occurred at the time, place and in the manner alleged.

The second component of fact of injury 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,

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<sup>2</sup> 5 U.S.C. § 8101(2) provides that the term "physician" includes chiropractors "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist."

<sup>3</sup> In its decision, the Office stated that any previously paid continuation of pay would be charged to appellant's sick and/or annual leave or if he does not have a leave balance, the money already paid as continuation of pay would be deemed an overpayment within the meaning of 5 U.S.C. § 5584.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>5</sup> *David J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>6</sup> *Elaine Pendleton*, *supra* note 4.

based on a complete factual and medical background, supporting such a causal relationship.<sup>7</sup> The Office found that the medical evidence was insufficient to support that appellant sustained an injury as a result of the incident.

In support of his claim, appellant submitted November 18 and December 2, 2002 authorizations for absence and a November 22, 2002 duty status report from Dr. Boos, a chiropractor, who did not diagnose a subluxation of the spine as demonstrated by x-ray to exist. Therefore, he is not a physician in this case and his authorizations for absence and duty status report do not constitute competent medical evidence.<sup>8</sup> As appellant failed to submit medical evidence to support his claim, the Board finds that he has failed to meet his burden of proof.

The decision of the Office of Workers' Compensation Programs dated January 3, 2003 is affirmed.

Dated, Washington, DC  
June 23, 2003

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

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<sup>7</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *see* 20 C.F.R. § 10.110(a).

<sup>8</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992).