

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PATRICIA P. WILLIAMS and DEPARTMENT OF AGRICULTURE  
FSIS, Noel, MO

*Docket No. 03-1796; Submitted on the Record;  
Issued September 25, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has established that she sustained an injury in the performance of duty.

On June 28, 2002 appellant, then a 31-year-old employee, filed a traumatic injury claim alleging that on May 31, 2002 the viscera of a chicken was broken and the ingested feed was sprayed into both of her eyes, which scratched her left eye. Appellant stopped work on the date of injury. Appellant's claim was accompanied by evidence indicating that she received medical treatment on the date of injury.

By letter dated July 8, 2002, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish her claim. The Office advised appellant about the type of medical evidence she needed to submit to establish her claim. In response, appellant submitted medical and factual evidence.

By decision dated August 12, 2002, the Office found the evidence of record sufficient to establish that appellant actually experienced the claimed accident, but insufficient to establish that she sustained a medical condition caused by the incident.<sup>1</sup>

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty.

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<sup>1</sup> The Board notes that subsequent to the Office's August 12, 2002 decision, the Office received additional factual and medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. See *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952); 20 C.F.R. § 501.2(c).

A person who claims benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of her claim, including that she sustained an injury while in the performance of duty and that she had disability as a result.<sup>3</sup> In accordance with the Federal (FECA) Procedure Manual, to determine whether an employee actually sustained an injury in the performance of her duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components, which must be considered, in conjunction with the other.

The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>4</sup> In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged. In this case, the Office accepted that appellant experienced the claimed accident as alleged. The Board finds that the evidence of record supports this incident.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>5</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.<sup>6</sup> The belief of the claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.<sup>7</sup>

In support of her claim, appellant submitted medical treatment notes dated May 31, 2002, providing a history of the May 31, 2002 employment incident and indicating that she could not return to work until June 2, 2002. The treatment notes do not contain a legible diagnosis of a condition that was caused by the accepted employment incident.

Appellant also submitted an unsigned home care instruction form from Freeman Neosho Hospital, dated May 31, 2002. This form does not constitute medical evidence under the Act.<sup>8</sup>

Although the Office advised appellant of the type of medical evidence needed to establish her claim, appellant failed to submit medical evidence responsive to the request. Consequently,

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Charles E. Evans*, 48 ECAB 692 (1997); *see* 20 C.F.R. § 10.110(a).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

<sup>6</sup> *Lourdes Harris*, 45 ECAB 545 (1994); *see* *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>7</sup> *Charles E. Evans*, *supra* note 3.

<sup>8</sup> *Merton J. Sills*, 39 ECAB 572 (1988).

appellant has not established through the submission of medical evidence that she sustained an eye condition caused by the May 31, 2002 employment incident.

The August 12, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
September 25, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member