

**United States Department of Labor
Employees' Compensation Appeals Board**

ROSA G. CABRAL-RAINES, Appellant

and

**DEPARTMENT OF AGRICULTURE, APHIS-
PPQ, Tampa, FL Employer**

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**Docket No. 04-1177
Issued: August 10, 2004**

Appearances:
Rosa G. Cabral-Raines, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 29, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 19, 2004, finding that the evidence failed to establish fact of injury. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury while in the performance of duty on December 29, 2003 as alleged.

FACTUAL HISTORY

On December 30, 2003 appellant, then a 31-year-old technician, filed a notice of traumatic injury alleging that while working on December 29, 2003 her vehicle was struck across the front by a van. Appellant asserted that she twisted her back and pinched her sciatic nerve on the left side of the body and down the back of her leg during the automobile accident. Appellant did not stop work.

In support of the claim, appellant submitted a motor vehicle accident report and traffic citation which outlined the details of the December 29, 2003 incident. By letter dated January 16, 2004, the Office requested additional information from appellant in the form of medical evidence diagnosing an injury in connection with the alleged incident. Specifically, appellant was requested to have her treating physician submit a medical report including a correct description of how the injury occurred; findings, a firm diagnosis and dates of total disability if any. Appellant was allotted 30 days to provide the information requested but did not respond within the time allotted.

By decision dated February 19, 2004, the Office denied appellant's claim. The Office accepted that the automobile accident occurred but found that appellant failed to submit medical evidence which provided a diagnosis for the injury.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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."² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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.⁴ In the instant case, there is no dispute that the claimed incident occurred at the time, place and in the manner alleged. Appellant alleged that she was involved in an automobile accident at work, which was confirmed by a motor vehicle report submitted in support of the claim.

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

¹ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

² *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

³ *David J. Overfield*, 42 ECAB 718, 721 (1991).

⁴ *Elaine Pendleton*, *supra* note 2.

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.⁵

ANALYSIS

In this case, appellant alleged that she twisted her back, pinching her sciatic nerve on the left side and down her leg during an automobile accident on December 29, 2003. In its February 19, 2004 decision, the Office denied her claim, finding the evidence insufficient to establish that she sustained an injury on December 29, 2003 because there was no medical evidence to indicate the nature of her alleged medical condition. The Office noted that appellant failed to submit any evidence to support that she sustained an injury as a result of the employment incident.

The Board has carefully reviewed the record and finds that there is no medical evidence of record to support fact of injury as alleged. The Office correctly advised appellant that, as of the date of its February 19, 2004 decision, the record was devoid of any evidence to satisfy appellant's burden of proof. Appellant was advised, in an Office letter dated January 16, 2004, that she had the burden of proof to establish that she was injured as a result of the alleged work incident of December 29, 2003. Appellant was informed that she needed to submit reasoned medical evidence in support of her claim. Appellant was specifically told to provide a detailed medical report from her treating physician, which discussed how the injury occurred, findings, a firm diagnosis along with dates of disability if any, causally related to the December 29, 2003 work incident. Because she did not provide a reasoned medical opinion as requested by the Office to support her claim for compensation, the Board finds that the Office properly denied appellant's claim.⁶

⁵ *Kathryn Haggerty*, 45 ECAB 383 (1994); see 20 C.F.R. § 10.110(a).

⁶ The Board notes that appellant submitted medical evidence with her appeal. As this evidence was not previously considered by the Office prior to its February 19, 2004 decision, the evidence represents new evidence which cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(a). Appellant may resubmit this evidence to the Office, together with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b).

CONCLUSION

The Board finds that appellant failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty on December 29, 2003 as alleged. Therefore, the Office properly denied appellant's claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 19, 2004 is affirmed.

Issued: August 10, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member