

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

HABIBAH S. AFIF, Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Philadelphia, PA, Employer)

Docket No. 03-1121
Issued: January 8, 2004

Appearances:
Habibah S. Afif, 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 31, 2003 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated March 6, 2003. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.¹

ISSUE

The issue is whether appellant established that she sustained an injury in the performance of duty on December 30, 2002.

¹ The Board's jurisdiction is limited to review of the evidence that was before the Office at the time it issued its final decision. The Board may not consider new evidence on appeal. See 20 C.F.R. § 501.2(c); *Ricky S. Storms*, 52 ECAB 349 (2001).

FACTUAL HISTORY

On December 31, 2002 appellant, then a 34-year-old health technician, filed a notice of traumatic injury alleging that on December 30, 2002 she injured her right shoulder and right hip while transferring a patient from one bed to another. She stopped working on December 30, 2002.

In a letter dated January 31, 2003, the Office advised appellant that there was no medical evidence of record to establish that she sustained an injury on December 30, 2002 as alleged. The Office advised appellant that she had 30 days to submit a detailed medical report from her treating physician, which included a diagnosis of injury and addressed how the employment incident caused the diagnosed condition.

In a March 6, 2003 decision, the Office denied the claim on the grounds that appellant failed to establish fact of injury. The Office noted that the record was insufficient to establish that appellant sustained a work injury as alleged and that there was no medical evidence that provided a diagnosis which could be connected to the claimed events.

LEGAL PRECEDENT

To determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.² The second component is whether the employment incident caused a personal injury.³

ANALYSIS

In this case, appellant alleged that she hurt her right shoulder and right hip when she assisted in moving a patient to a new bed on December 30, 2002. In its March 6, 2003 decision, the Office denied her claim, finding the evidence insufficient to establish that she sustained an injury on December 30, 2002 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 March 6, 2003 decision, the record was devoid of any evidence to satisfy appellant’s burden of proof. Appellant was advised, in an Office letter dated January 31, 2003, that she had the burden of proof to establish that she was injured as a result of the alleged work incident of December 30, 2002. She was informed that she needed to submit reasoned medical evidence in support of her claim. Appellant was specifically told to provide a detailed medical

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

³ *John J. Carlone*, 41 ECAB 354 (1989).

report from her treating physician, which discussed the nature of her injury and how it was causally related to the December 30, 2002 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.⁴

CONCLUSION

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on December 30, 2002.

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ The Office received additional evidence subsequent to its March 6, 2003 decision. On appeal appellant points out that the employing establishment did not file her paperwork in a timely fashion, allowing it to sit until after the "appeal was denied." As previously noted in this decision, the Board does not have jurisdiction to review evidence that was not before the Office at the time it issued its final decision. However, this does not preclude appellant from submitting evidence along with a request for reconsideration to the Office if she wishes to pursue her claim.