

To briefly review, the Board notes that on May 20, 2002 appellant, then a 53-year-old rural carrier, filed a traumatic injury claim alleging that on January 19, 2002 at 6:30 p.m., while crossing the parking lot to his car, he was hit by another carrier backing up and sustained a compressed or herniated disc. The employing establishment controverted the claim.

In support of his claim, appellant submitted a May 15, 2002 progress note by Dr. Kathy C.B. Gembarowski which indicated that appellant was a veteran who had a service-related spinal disc condition. She also described the January 2002 incident and stated that appellant told her that at the time of the incident he had his back x-rayed and that he was told he had a collapsed or bulging disc at L4. Dr. Gembarowski found that appellant had minimal degenerative joint disease in the L3-5 areas. She further noted, "As likely as not the veteran's current lower back condition is impacted by his service-related injuries."

In a July 15, 2002 decision, the Office denied appellant's claim as it found that the medical evidence was not sufficient to establish that appellant's condition was caused by the injury and also because the accident did not occur in the performance of duty. By decision dated August 22, 2003, the Board found that this case was not in posture for decision, and remanded with instructions that the Office further develop the claim with regard to whether the accident occurred in the performance of duty.²

By decision dated January 9, 2004, the Office found that the factual evidence did establish that the incident occurred while in the performance of duty on January 19, 2002. However, the Office found that the medical evidence did not establish that the injury resulted from the employment incident.

On August 27, 2004 appellant requested reconsideration. In support thereof, appellant submitted an August 14, 2002 report by Dr. Leland L. Swenson, a Board-certified orthopedic surgeon, who noted that appellant stated that he was injured in January 2002 when he was struck by a car. He listed his impressions as chronic backache with sciatica, right radiculopathy, S1 more than L5, history of old L4-5 discectomy 1971 and calcific aorta. Dr. Swenson concluded that appellant was unable to return to his former job for the employing establishment which involved driving a rural route and delivering mail as this job involved twisting, sorting and lifting bundles of mail. Appellant also submitted his assessments of range of motion on a Michigan disability form and information revealing that appellant is in receipt of Social Security disability benefits effective January 19, 2002 based on Dr. Swenson's report.

By decision dated November 1, 2004, the Office denied modification of the January 9, 2004 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim, including the fact that the

² *Id.*

³ 5 U.S.C. §§ 8101-8193.

individual is an “employee of the United States” within the meaning of the Federal Employees’ Compensation Act; that the claim was filed within the applicable time limitation; that an injury was sustained while 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or on an occupational disease.⁵

To determine whether an employee has sustained a traumatic injury in the performance of duty, “fact of injury” must first be established.⁶ The employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸ The medical evidence required to establish causal relationship is usually rationalized medical evidence.⁹

ANALYSIS

Although there is no dispute that the January 19, 2002 incident as alleged by appellant occurred in the performance of duty, appellant has still not submitted medical evidence sufficient to establish that he sustained a medical condition causally related to the January 19, 2002 employment incident. Although Dr. Gembarowski mentions appellant’s employment incident, she does not link it to appellant’s current medical condition. She does not provide any rationalized medical opinion evidence explaining how the employment incident caused appellant’s back problems and notes that appellant’s lower back condition was impacted by his service-related injuries. Dr. Swenson indicated that appellant noted the employment injury as the cause of his back problems, but Dr. Swenson did not proffer a medical conclusion as to the causal relationship between the employment incident and appellant’s back condition, but merely noted that he could not return to this position. Neither the fact that the condition became apparent during a period of employment nor appellant’s belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.¹⁰ Finally, the Board notes that as entitlement to benefits under the Social Security Act does not establish entitlement to benefits under the Federal Employees’ Compensation Act as the two acts require different

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 4.

⁶ *Neal C. Evins*, 48 ECAB 242 (1996).

⁷ *Michael W. Hicks*, 50 ECAB 325, 328 (1999).

⁸ 5 U.S.C. § 8101(5); 20 C.F.R. § 10.5(ee) (defining traumatic injury).

⁹ *Michael E. Smith*, *supra* note 5.

¹⁰ *Robert A. Boyle*, 54 ECAB ____ (Docket No. 02-2177, issued January 27, 2003).

standards of proof.¹¹ Therefore, the Board finds that the reports are insufficient to establish appellant's claim and thus he has failed to meet his burden of proof.

CONCLUSION

Appellant has not established that he sustained an injury in the performance of duty on January 19, 2002, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 1 and January 9, 2004 are affirmed.

Issued: June 7, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ *Daniel Deparini*, 44 ECAB 657 (1993).