

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

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**VERDA M. WEAVER, Appellant**

**and**

**DEPARTMENT OF THE NAVY, DEFENSE  
FINANCE & ACCOUNTING SERVICE,  
St. Louis, MO, Employer**

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**Docket No. 06-647  
Issued: June 6, 2006**

*Appearances:*  
*Verda M. Weaver, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 25, 2006 appellant filed a timely appeal of a January 11, 2006 decision of an Office of Workers' Compensation Programs, denying her claim for compensation. Pursuant to 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 established an injury in the performance of duty on October 26, 2005.

**FACTUAL HISTORY**

On November 10, 2005 appellant, then a 57-year-old accounting technician, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury to her left leg in the performance of duty on October 26, 2005. Appellant stated on the claim form that her lower left leg started itching and became swollen and red; the time of injury was reported as 12:00 p.m. In a narrative statement dated November 10, 2005, appellant reported that she was sitting at her

desk when her left leg began itching. Appellant indicated that she went to the employing establishment health unit and, after her workday was complete, she went to the emergency room.

The record contains a note from the employing establishment health unit dated October 26, 2005 that appellant was seen for a “possible insect bite that happened this morning.” The note reported the lower left leg was red and swollen “around [illegible] site.” There are hospital notes dated October 27 and 31, 2005 indicating treatment to the left leg but they are otherwise illegible. A laboratory report dated October 31, 2005 indicated that a bacteria culture revealed methicillin resistant staphylococcus aureus (MRSA) bacteria.

A hospital treatment note dated November 1, 2005 reported that appellant had a history of an “insect bite yesterday.” The note indicated that an incision was made and an infected area of the leg was drained. A November 8, 2005 hospital note is largely illegible but appears to diagnose an infection secondary to spider bite.

In a form report (CA-20) dated November 8, 2005, Dr. Athmaram Shetty, an internist, reported findings of left leg abscess “after insect bite -- most likely spider bite.” Dr. Shetty diagnosed MRSA staph infection and checked a box “yes” that the condition was employment related.

In response to a request for additional information, appellant stated that she was sitting at her desk on October 28, 2005 (sic) when her leg began to itch. Appellant stated that the nurse told her she was bitten by some type of insect, and that appellant believed she was bitten by a spider.

By decision dated January 11, 2006, the Office denied the claim for compensation. The Office determined that an employment incident had not occurred as alleged.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act has the burden of establishing the essential elements of 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 timely filed within the applicable time limitation period 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>1</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>2</sup>

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<sup>1</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>2</sup> *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990). To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury. See *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

Congress, in providing a compensation program for federal employees, did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence of an employee-employer relation. Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>3</sup> The phrase while in the performance of duty has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers compensation law of arising out of and in the course of employment.<sup>4</sup>

### ANALYSIS

Appellant has alleged that she was bitten at work on October 26, 2005 and she has indicated that she believes it was a spider bite. The initial question presented is a factual question as to whether: (1) there was some type of bite; and (2) whether it occurred at work. Although this is a factual issue, clearly the medical evidence may be pertinent both in confirming the alleged factual circumstances as well as providing an opinion on the occurrence of a bite. It is not necessary that appellant identify whether she was bitten by a spider or some type of insect, as long as the evidence is consistent in showing that she was bitten while in the performance of duty.<sup>5</sup>

In this case, appellant did not allege a specific incident in which she recalled the sensation of being bitten on October 26, 2005.<sup>6</sup> She indicated that her left leg began itching and she clearly had left leg symptoms for which she received treatment at the employing establishment health unit and the hospital. There are references to a possible spider bite in the treatment notes, although it is not until November 8, 2005 that Dr. Shetty reported that there was a bite and it was most likely a spider bite. He did not provide any explanation for his statement. The record indicated, and Dr. Shetty diagnosed, an MRSA bacterial infection, but there is no explanation as to whether a spider bite was consistent with this finding.<sup>7</sup>

In addition, there remains the problem of when the alleged bite would have occurred. As noted, appellant did not have a specific recollection of a bite. Dr. Shetty did not discuss the

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<sup>3</sup> *Mary Kokich*, 52 ECAB 239, 240 (2001).

<sup>4</sup> *Kathryn A. Tuel-Gillem*, 52 ECAB 451, 452-53 (2001). In addressing this issue, the Board has stated that to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto. *See id.*

<sup>5</sup> *See Edward P. Prior*, 45 ECAB 288 (1994) (harm from a neutral risk, one in which the cause itself or the character of the cause was simply unknown, is compensable).

<sup>6</sup> *Compare Doyle W. Ricketts*, 48 ECAB 167 (1996) (claimant felt a "stinging sensation" in the left heel); *Linda S. Christian*, 46 ECAB 598 (1995) (claimant felt something bite her leg).

<sup>7</sup> The employing establishment submitted a document from the Seattle and King County Public Health Department noting that MRSA staph infections are sometimes mistaken for spider bites.

issue. The Board notes that there are some inconsistencies in the record regarding the time of the alleged biting incident. Although appellant's reference to October 28, 2005 may have been inadvertent, there is also the November 1, 2005 hospital treatment note reporting that the incident occurred "yesterday." No explanation was provided for the apparent inconsistency in the record.

The Board accordingly finds that, based on the evidence currently of record, there is insufficient evidence to establish that appellant was bitten while in the performance of duty on October 26, 2005 as alleged. It is appellant's burden of proof, and she has not submitted the necessary evidence to meet her burden in this case.

**CONCLUSION**

The Board finds that appellant has not established an injury in the performance of duty on October 26, 2005.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 11, 2006 is affirmed.

Issued: June 6, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board