

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on October 22, 2004.

FACTUAL HISTORY

On July 11, 2006 appellant, then a 53-year-old mail carrier, filed a traumatic injury claim, (File Number 16-2116813), alleging that she sustained injury to her neck and right shoulder at work on October 22, 2004 when she lifted a bucket weighing 20 to 25 pounds.²

In an October 23, 2006 report, Dr. Stephen M. Wilson, an attending Board-certified orthopedic surgeon, indicated that appellant reported having difficulty with her right shoulder. He stated that appellant reported that she injured her right shoulder for the first time in 2003 “in an automobile accident where the arm was hanging out the window” and that she also injured her neck and right shoulder in another accident in 2004. Dr. Wilson indicated that appellant exhibited pain upon movement of the right arm and recommended work restrictions including no lifting more than 10 pounds with the right arm.

In a November 3, 2006 decision, the Office denied appellant’s claim that she sustained an employment injury on October 22, 2004. The Office found that appellant established the occurrence of an employment incident on October 22, 2004 in the form of lifting a bucket weighing 20 to 25 pounds, but that she did not submit sufficient medical evidence to establish that she sustained an injury due to that incident.³

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act⁴ 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 specific condition for which compensation is claimed are causally related to the employment injury.⁵ These are the essential

² Appellant had previously filed an occupational disease claim (File Number 16-2102275) on October 4, 2005 in which she appeared to attribute her medical problems to a July 9, 2003 motor vehicle accident, the October 22, 2004 lifting incident and various work duties. By decision dated December 19, 2005, the Office denied appellant’s claim on the grounds that she did not submit sufficient medical evidence in support thereof.

³ Appellant submitted additional evidence after the Office issued its November 3, 2006 decision. The Board’s jurisdiction on this appeal is limited to evidence that was before the Board at the time of the November 3, 2006 decision. 20 C.F.R. § 501.2(c). Appellant may wish to resubmit such evidence to the Office through the reconsideration process. *See* 5 U.S.C. § 8128; 20 C.F.R. §§ 10.605 to 10.607.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

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. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁷ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸ The term injury as defined by the Act refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to or contact with certain factors, elements or conditions.⁹

ANALYSIS

Appellant claimed that she sustained injury to her neck and right shoulder at work on October 22, 2004 when she lifted a bucket weighing 20 to 25 pounds. The Board finds that she established the occurrence of an employment incident on October 22, 2004 in the form of lifting a bucket weighing 20 to 25 pounds, but that she did not submit sufficient medical evidence to establish that she sustained an injury due to that incident.

In support of her claim, appellant submitted an October 23, 2006 report in which Dr. Wilson, an attending Board-certified orthopedic surgeon, indicated that appellant reported having difficulty with her right shoulder. Dr. Wilson indicated that she exhibited pain upon movement of the right arm and recommended work restrictions. This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on causal relationship.¹⁰ Dr. Wilson did not provide an opinion that appellant sustained an employment injury on October 22, 2004 as alleged. Although he stated that appellant reported that she injured her right shoulder and neck in an accident in 2004, he did not describe the nature of the reported injury or the date that it occurred. Dr. Wilson merely made note of the injury as reported by appellant and he did not provide any opinion whatsoever that she sustained an employment injury.¹¹

⁶ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

⁷ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁸ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁹ *Elaine Pendleton*, *supra* note 4; 20 C.F.R. § 10.5(a)(14).

¹⁰ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹¹ The Board notes that it is not clear whether Dr. Wilson treated appellant at any point close in time to the alleged October 22, 2004 injury.

Appellant did not submit any other medical evidence prior to the denial of her claim on November 3, 2006. For these reasons, the Office properly denied her claim that she sustained an injury in the performance of duty on October 22, 2004.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on October 22, 2004.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' November 3, 2006 decision is affirmed.

Issued: May 23, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board