

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on June 9, 2008.

FACTUAL HISTORY

On July 7, 2008 appellant, then a 39-year-old equal employment specialist, filed a traumatic injury claim (Form CA-1) alleging that on June 9, 2008 she was injured in an assault and attempted rape. She indicated that the incident occurred in Washington, DC on E Street, Southwest between 3rd and 4th Streets at 6:15 a.m.

By letter dated July 24, 2008, the Office requested that appellant submit additional factual and medical evidence regarding her claim. It did not receive any additional evidence.

In a decision dated September 3, 2008, the Office denied appellant's claim for compensation. It found that the factual evidence was insufficient to establish the alleged incident or medical evidence providing a diagnosis that could be connected to the alleged incident.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."² The phrase "sustained while in the performance of duty" in the Act is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment."³ An employee seeking benefits under the Act has the burden of establishing that he or she sustained an injury while in the performance of duty.⁴ 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. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁵

An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁶

² 5 U.S.C. § 8102(a).

³ *Valerie C. Boward*, 50 ECAB 126 (1998).

⁴ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁵ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁶ *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

ANALYSIS

Appellant filed a traumatic injury claim alleging an assault on June 9, 2008. With respect to the factual element of the claim, it is appellant's burden of proof to submit sufficient evidence necessary for the Office to make a determination as to whether an employment incident occurred, as alleged. The evidence must be sufficient to establish whether the claimant was in the course of her federal employment at the time of the incident, so that a proper determination may be made as to whether an injury occurred while in the performance of duty.

The only evidence before the Office at the time of the September 3, 2008 decision was the traumatic injury claim form. While the Office requested additional factual and medical evidence, no evidence was received by September 3, 2008.⁷ The Board accordingly finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on June 9, 2008.

CONCLUSION

The Board finds that appellant did not establish an injury in the performance of duty on June 9, 2008.

⁷ The Board's review of a case is limited to evidence that was before the Office at the time of the September 3, 2008 decision. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the September 3, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 9, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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