



CA-2 claim for benefits, alleging a dislocated right shoulder when she fell while lifting boxes into a moving van outside her home in California on August 6, 2007. In a statement received by OWCP on July 21, 2009, appellant asserted that she was packing in preparation for her move from California to San Antonio, Texas, where she was scheduled to commence employment with DLIELC on September 4, 2007. She had worked at employing establishment since September 4, 2007.

By letter dated June 11, 2009, OWCP advised appellant that it required additional evidence to determine whether she was eligible for compensation benefits. It informed her that it did not appear that she was a federal employee at the time of her alleged injury. OWCP requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted a position description and a Form SF-50 which indicated that her federal employment was to commence as of September 4, 2007.

By decision dated November 30, 2009, OWCP denied appellant's claim, finding that she was not eligible for compensation under the Act because she was not an "employee" of the United States for the purpose of coverage under the Act.

By letter dated April 16, 2010, the employing establishment asserted that appellant was not a federal employee as of August 6, 2007 for purposes of receiving compensation. It advised that she did not formally begin her federal employment until September 4, 2007, when she took an oath and completed affidavits which formally commenced her employment. Therefore, September 4, 2007 marked the effective date of appellant's federal employment.

By letter dated December 21, 2009, appellant's attorney requested a hearing, which was held on March 23, 2010. At the hearing, appellant testified that, prior to moving to Texas, she received a verification letter of employment from the DLIELC dated July 19 or 20, 2007 which constituted proof of her federal employment. She acknowledged, however, that she did not receive a moving allowance, reimbursement or any stipend for her move; nor did she receive compensation for government service prior to her September 4, 2007 employment start date. Appellant stated that she had a copy of the verification letter, which she used as proof of employment to obtain an apartment in San Antonio, and that she would submit this letter to OWCP. OWCP's hearing representative agreed to keep the record open for 30 days to provide appellant the opportunity to submit a copy of the employment verification letter; however, the record does not contain a response.

By decision dated June 28, 2010, OWCP's hearing representative affirmed the November 30, 2009 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act<sup>2</sup> has the burden of establishing that the essential elements of his or 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

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

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>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

Section 8101(1) of the Act defines a federal employee as “a civil officer or employee in any branch of the government of the United States, including an officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance of use of the service or authorizes payment of travel or other expenses of the individual.”

Section 10.5 of the implementing regulations define a federal employee as:

“(1) A civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States;

“(2) An individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the use of the service, or authorizes payment of travel or other expenses of the individual.”

### ANALYSIS

The Board finds that appellant has not submitted sufficient evidence to establish that she was an “employee of the United States” within the meaning of the Act at the time of her alleged August 6, 2007 injury. Appellant did not submit sufficient evidence to establish that she was employed by the Federal Government under the definitions listed above. It is uncontested that she did not commence employment. On the date of her alleged injury, appellant was packing her belongings in preparation for a move from California to Texas, where she would begin her federal employment almost a month later. While she may have received a formal offer of federal employment prior to her injury, it was for employment which would not commence until September 4, 2007. Appellant was not a federal employee or a person rendering service similar to that of a federal employee at the time of her injury. The act of loading boxes into a moving truck did not constitute federal employment. Appellant was not rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, under a statute which authorizes the acceptance or use of the use of the service or authorizes payment of travel or other expenses. She acknowledged at the hearing that she did not receive any compensation prior to September 4, 2007 or reimbursement for her moving expenses. Appellant was not providing any service or benefit to the employing establishment at the time of

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<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

her alleged injury. Therefore her preemployment activity on August 6, 2007 was personal and was not undertaken as a federal employee.<sup>5</sup>

Accordingly, appellant has not established that she was a federal employee for the purpose of coverage under the Act as of August 6, 2007 and is not entitled to compensation. The Board will affirm the June 28, 2010 OWCP decision.

**CONCLUSION**

The Board finds that appellant has failed to establish that she is a federal employee within the meaning of the Act for purposes of receiving compensation for her alleged August 6, 2007 injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 28, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 18, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>5</sup> See, e.g., *Larry Knoke*, 39 ECAB 353 (1988), where the Board affirmed the denial of the claim of a Post Office trainee who suffered a sprained hand and possible nerve damage while engaging in preemployment testing. The Board noted that at the time of the claimant's injury that he was receiving no pay from the employing establishment and was "providing no identifiable service or benefit" to the agency. See also *William K. Bowen*, 49 ECAB 248 (1997).