

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALMA A. ADAMS and DEPARTMENT OF JUSTICE,
BUREAU OF PRISONS, Lexington, KY

*Docket No. 98-1702; Submitted on the Record;
Issued February 24, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an injury in the performance of duty.

In October 1997 appellant, then a 50-year-old senior correctional officer, filed a claim for compensation alleging that she was aware on October 7, 1997 that she contracted tuberculosis when she was required to escort an inmate who had the disease. In an attached narrative, appellant stated that she was in contact with the inmate who had tuberculosis from July to December 1996, and that as part of a routine physical examination, it was determined that appellant was positive for tuberculosis. Appellant further noted that she was exposed to a contaminated inmate eight hours a day, two days a week for two quarters. Although she acknowledged that x-rays were negative, she believed that her kidney condition was caused by the disease.

In a medical report dated October 15, 1997, Dr. William H. Hanley, a specialist in emergency medicine, stated that he treated appellant that day for an urinary infection.

In a report dated December 12, 1997, the employing establishment stated that it was controverting appellant's claim on the grounds that there was no evidence to suggest that appellant had been exposed to tuberculosis while working at the facility. The employing establishment noted that the inmate that appellant noted had tuberculosis had been tested on three occasions and the results were negative for that condition. The employing establishment additionally noted that appellant's test for tuberculosis was evaluated "too early. It was evaluated at 24 hours instead of the 48 to 72 hours. Once this was realized, another reading was attempted but [appellant] was unavailable. We will forward more medical documentation ... as soon as we receive it."

By letter dated January 21, 1998, the Office of Workers' Compensation Programs advised appellant that she needed to submit additional information regarding her claim for

compensation, including a detailed narrative medical report explaining how the doctor believed that appellant's federal employment caused her current medical condition.

In a decision dated February 25, 1998, the Office denied appellant's claim on the grounds that she failed to establish that she had sustained tuberculosis as alleged.

The Board finds that appellant has failed to establish that she sustained a compensable injury on December 17, 1997.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim² including the fact that the individual is an "employee of the United States" within the meaning of the Act,³ that the claim was timely filed within the applicable time limitation period of the Act,⁴ 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.⁵

In this case, appellant alleged that she had been tested positive for tuberculosis by the employing establishment during a routine physical examination and that she believed that she had contracted this disease through regular contact with a contaminated inmate. However, the employing establishment presented evidence that the inmate that appellant alleged had tuberculosis in fact had been tested on three occasions and was determined to be negative with regards to whether he had tuberculosis. Further, the employing establishment noted that appellant's positive reading was based on an improper evaluation of her blood test and that it had attempted to conduct a second test but that appellant was not available. Given the absence of probative medical evidence that appellant had tuberculosis coupled with the fact that the inmate whom she alleged had tuberculosis was not infected, the Board finds that appellant failed to establish that she sustained tuberculosis through contact with an infected inmate while in the performance of duty.

Accordingly, appellant failed to carry her burden of proof in this case that her medical condition was sustained while in the performance of duty.

The February 25, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.⁶

¹ 5 U.S.C. §§ 8101-8193.

² See *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983); 20 C.F.R. § 10.110.

³ *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

⁴ 5 U.S.C. § 8122.

⁵ See *Daniel R. Hickman*, *supra* note 2.

⁶ The Board notes that the record contains evidence filed subsequent to the Office's February 25, 1998 decision. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

Dated, Washington, D.C.
February 24, 2000

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member