U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH DAVIS and DEPARTMENT OF DEFENSE,
DEFENSE INDUSTRIAL SUPPLY CENTER, Philadelphia, PA

Docket No. 99-120; Submitted on the Record;
Issued March 27, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained an injury in the performance of duty on September 18, 1997.

On September 18, 1997 appellant filed a claim for a badly bruised rib area sustained on that date when he was struck by a mail delivery truck on a ramp. Appellant stopped work on September 18, 1997 and returned to work on September 29, 1997. By letter dated May 18, 1998, the Office of Workers' Compensation Programs advised appellant that he needed a medical report including the physician's opinion on the causal relationship between his disability and the reported injury. The Office allotted appellant 30 days to submit this report. Having received no response, the Office, by decision dated June 26, 1998, found that the evidence supported that appellant actually experienced the claimed incident, but that no medical evidence was submitted to support that he sustained an injury as claimed.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim[2] 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]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *See Daniel R. Hickman*, 34 ECAB 1220 (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.

In the present case, appellant has established, and the Office accepted, that he was an employee of the United States on September 18, 1997, that he filed a timely claim for an injury occurring on that date, and that the September 18, 1997 incident occurred at the time, place and in the manner alleged by appellant. However, to accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[6] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[7]

The Board finds that appellant has not established that he sustained a personal injury due to the September 18, 1997 incident in which he was struck by a delivery truck. At the time of the Office's June 26, 1998 decision, appellant had not submitted any medical evidence, and for this reason, had not met his burden of proof. Appellant submitted a medical report to the Board on appeal, but the Board cannot consider this evidence, as its review is limited to the evidence that was before the Office at the time of its final decision.[8]

The decision of the Office of Workers' Compensation Programs dated June 26, 1998 is affirmed.

Dated, Washington, D.C.
March 27, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[6] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *John J. Carlone*, 41 ECAB 354 (1989).

[8] 20 C.F.R. § 501.2(c). As the Office advised appellant at the time of its June 26, 1998 decision, new evidence may be submitted to the Office in conjunction with a request for reconsideration.