

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WAYNE BEEBE and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, Ill.

*Docket No. 96-791; Submitted on the Record;
Issued January 12, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he sustained a right knee traumatic injury on October 17, 1992 in the performance of duty.

Appellant, a 50-year-old letter carrier, filed a traumatic injury claim (Form CA-1) on October 27, 1992, alleging that he sustained a right ankle injury while delivering mail on October 17, 1992. Dr. Henry Bernstein, a Board-certified orthopedic surgeon, treated appellant on October 19, 1992 for soreness of the right knee, and recommended at a follow-up evaluation on October 26, 1992, total disability from work. Diagnostic studies, including x-rays and a magnetic resonance imaging scan showed osteoarthritic changes and a loose body. In a form report mid-December 1992, Dr. Bernstein diagnosed chondromalacia of the right knee and indicated with a check mark that appellant's condition had been aggravated by his employment, necessitating the six weeks off from work, from October 26 until December 14, 1992. Dr. Bernstein noted a history of a prior knee condition, and subsequent records show that he performed arthroscopic debridement of the right knee on December 29, 1992.

By decision dated May 7, 1992, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the medical evidence did not establish a causal relationship between the diagnosed condition and an incident at work, as alleged by appellant. Upon requests for reconsideration and a request for a hearing, appellant noted that the prior knee condition was to his left knee, and he maintained that he injured his right knee at work on October 17, 1992. He submitted medical records of his prior knee surgery to his left knee, performed in February 1980, and a note from Dr. Bernstein's office, relating to his lack of prior injury to his right knee. In subsequent decisions, the Office found the evidence insufficient to warrant modification of the

prior Office decisions, based on the lack of a report from Dr. Bernstein explaining the cause of appellant's right knee condition.¹

In support of a request for reconsideration dated February 7, 1996, appellant submitted a September 9, 1993 report from Dr. Bernstein, together with additional factual evidence from three persons to whom he delivered mail on October 17, 1992. In his September 9, 1993 report, Dr. Bernstein related appellant's articular cartilage fragmentation, which was found at the time of the arthroscopic surgery on December 29, 1992, to his employment. He noted that prior to examining him for right knee pain on October 19, 1992, appellant provided a history of not being able to finish his route due to the increased pain. Dr. Bernstein stated that appellant's cartilage fragmentation "was probably due to and aggravated by his climbing on stairs while delivering mail."

By decision dated May 11, 1994, the Office reviewed the additional evidence and found that it was insufficient to establish a causal relationship between a single incident on October 17, 1992, and appellant's condition. The Office advised appellant that he could file a separate claim for an occupational disease using the CA-2 claim form. In support of a further request for reconsideration, appellant submitted a July 16, 1994 report by Dr. Bernstein. Dr. Bernstein stated that appellant's cartilage fragmentation "is certainly related to injury or chronic overuse of the knee, especially climbing stairs." By decision dated September 19, 1995, the Office reviewed the additional medical report and found it insufficient to warrant modification of the prior decision, based on the lack of evidence of a traumatic incident causing appellant's condition.

The Board finds that appellant has failed to establish that he sustained a traumatic injury on October 17, 1992 in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim including the fact that the injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of each and every claim regardless of whether the claim is predicated upon a traumatic injury due to one single incident, or an occupational disease due to events occurring over a period of time.⁴

¹ In decisions dated August 6, 1993 and February 7, 1994, the Office reviewed the merits of appellant's claim and found the evidence insufficient to warrant modification of the prior decision. In a September 9, 1993 decision, the Office denied appellant's request for an oral hearing on the grounds that he had obtained a review of his claim under a reconsideration request earlier, and that he could submit new evidence through the reconsideration process.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ The Office's regulations clarify that a traumatic injury refers to an injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift whereas occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or shift. See 20 C.F.R. §§ 10.5(a)(15), (16).

The medical evidence does not establish that appellant sustained a right knee injury due to a single incident at work on October 17, 1992. The report from Dr. Bernstein supports a causal relationship between appellant's cartilage fragmentation, found at the time of surgery in December 1992, and his employment duties. However this medical evidence supports a claim for an occupational disease and not a traumatic injury. Appellant was advised by the Office to file a claim for an occupational disease. This being the case, appellant has failed to meet his burden of proof in establishing that he sustained a traumatic injury in the performance of duty on October 17, 1992.

The decision of the Office of Workers' Compensation Programs dated September 19, 1995 is hereby affirmed.

Dated, Washington, D.C.
January 12, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member