

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RANDY G. BONNEY and DEPARTMENT OF THE ARMY,
WHITE SANDS MISSILE RANGE, White Sands Missile Range, N.M.

*Docket No. 97-250; Submitted on the Record;
Issued October 6, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he was totally disabled from February 19 through March 1, 1996 due to his accepted employment injury.

On July 31, 1995 appellant, then a 42-year-old motor vehicle operator filed a notice of traumatic injury and claim for continuation of pay/compensation alleging that he injured his left knee on that same date when he hit his knee with a hand-held driver in the course of his federal employment. Appellant stopped work on August 1, 1995 and returned on August 17, 1995.

By decision dated December 6, 1995, the Office of Workers' Compensation Programs rejected appellant's claim for the reason that fact of injury was not established. Pursuant to appellant's request for reconsideration, however, the Office issued a decision on March 8, 1996 accepting the claim for a left knee contusion.

On March 28, 1996 the Office referred appellant, along with a statement of accepted facts. To Dr. John M.H. Allen, a Board-certified orthopedic surgeon, to address whether appellant was disabled from the accepted injury.

On March 20, 1996 Dr. Robert M Stack, appellant's treating physician and a Board-certified orthopedic surgeon, diagnosed an intra-articular derangement of the left knee. He indicated that appellant's employment aggravated a preexisting condition, but he further stated that appellant was never released from work and that he was not totally disabled.

On March 21, 1996 appellant filed a claim for compensation for the period of February 20 through March 1, 1996.

On March 25, 1996 Dr. Stack indicated that he examined appellant for a worsening knee and discussed an arthroscopy procedure.

On April 15, 1996 Dr. Allen reviewed appellant's history, symptoms, and objective tests. Dr. Allen also conducted a physical examination. Dr. Allen concluded that no residuals of the contusion from July 31, 1995 were evident and that the contusion had resolved. He stated that appellant could perform his present duties and that his current disability was due to preexisting degenerative changes and psychological factors.

On August 13, 1996 the Office requested that appellant present evidence establishing total disability for the period of February 20 through March 1, 1996. Appellant was allowed 20 days to respond.

By decision dated September 5, 1996, the Office rejected appellant's claim for compensation because the medical evidence failed to establish temporary total disability for the period of February 19 to March 1, 1996.

The Board finds that appellant failed to meet his burden of establishing that he was totally disabled from February 19 to March 1, 1996 as a result of his accepted employment injury.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his 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 time limitation 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.²

In the instant case, Dr. Allen, a Board-certified orthopedic surgeon, provided the only medical opinion addressing whether appellant was totally disabled from February 19 through March 1, 1996 as a result of his accepted injury. Dr. Allen, however, found that there were no residuals from appellant's accepted injury and indicated that appellant's disability stemmed entirely from a preexisting degenerative condition and psychological factors. Because this opinion failed to establish that appellant had a disability causally related to his employment injury, it is insufficient to meet appellant's burden of proof.³ Moreover, appellant was informed of the deficiency of the medical evidence, but he failed to submit additional evidence.

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Id.*

The decision of the Office of Worker's Compensation Programs dated September 5, 1996 is affirmed.

Dated, Washington, D.C.
October 6, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member