

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PHILLIP M. MILLER and U.S. POSTAL SERVICE,  
POST OFFICE, Lexington, KY

*Docket No. 02-520; Submitted on the Record;  
Issued July 10, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,  
WILLIE T.C. THOMAS

The issue is whether appellant met his burden of proof to establish that he sustained a right hip injury in the performance of duty on February 12, 1985.

On February 12, 1985 appellant, then a 42-year-old mail carrier, filed a claim alleging that he sustained an injury when he slipped and fell on an icy sidewalk at work.<sup>1</sup> He later claimed that he sustained traumatic arthritis of his right hip due to the February 12, 1985 employment incident. By decision dated April 26, 2000, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained an employment-related injury on April 26, 2000.<sup>2</sup> By decision dated and finalized August 1, 2001, an Office hearing representative affirmed the Office's April 26, 2000 decision.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a right hip injury in the performance of duty on February 12, 1985.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing 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 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>4</sup> These are the

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<sup>1</sup> Appellant indicated that he pulled his groin during the incident; he did not stop work after February 12, 1985.

<sup>2</sup> Appellant's claim had previously been denied by the Office under a different claim file. It appears that the records from that file have been incorporated into the present file.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the “fact of injury” has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.<sup>6</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup> The term “injury” as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.<sup>8</sup>

Appellant submitted several medical reports concerning the cause of his claimed right hip injury. These reports, however, are of limited probative value on the relevant issue of the present case in that they not provide adequate medical rationale in support of their conclusions on causal relationship.<sup>9</sup>

In a report dated July 19, 1999, Dr. Garnett J. Sweeney, an attending Board-certified orthopedic surgeon, noted that appellant reported that approximately 17½ years earlier he “did the splits in the snow” and experienced right hip pain. Dr. Sweeney stated:

“I have been asked to state, within reasonable medical probability, the cause of [appellant’s] hip problem. Assuming that his history is accurate, it is my opinion that he has traumatic arthritis based on a traumatic event sustained in or about 1985. To my knowledge, this is his only history of traumatic event. It would be very unusual for a 56-year-old to have unilateral hip disease of this severity without trauma.”

In a report dated August 31, 1999, Dr. William Wheeler, an attending Board-certified orthopedic surgeon, indicated that appellant reported that in 1985 he fell in the snow and did the splits. Dr. Wheeler diagnosed degenerative arthritis of the right hip and stated, “I feel this man’s problem with his right hip is that of traumatic arthritis and based upon the history obtained from [appellant], his traumatic event was the injury sustained in 1985. I base this upon the fact that

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<sup>5</sup> *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

<sup>6</sup> *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

<sup>8</sup> *Elaine Pendleton*, *supra* note 4; 20 C.F.R. § 10.5(a)(14).

<sup>9</sup> See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

this was the date of onset of his pain and this is the only event of trauma that has occurred to his hip.”

In a report dated March 23, 2000, Dr. John R. Allen, an attending Board-certified orthopedic surgeon, noted that appellant reported that about 15 or more years prior he slipped in the snow and did the splits. Dr. Wheeler diagnosed post-traumatic degenerative arthritis of the right hip and stated, “In view of the relatively normal appearance of his left hip I would think that the current problem with his right hip is largely the result of traumatic accident and the subsequent difficulty that he has described and [I] do n[o]t think it would be due to any predisposing or preceding difficulty and there certainly is no history of prior unusual trauma in his medical history before this incident.”

None of these reports contains a detailed description of the February 12, 1985 employment incident or an explanation of the medical process, which would have resulted in appellant sustaining employment-related traumatic arthritis of his right hip. These reports are of limited probative value for the further reason that they are not based on a complete and accurate factual and medical history.<sup>10</sup> The February 12, 1985 employment incident occurred approximately 14 or 15 years prior and these reports do not adequately describe the course of appellant’s right hip condition in the intervening years. The limited medical histories contained in the reports appear to be based heavily on appellant’s own recollections, rather than a thorough review and summary of the relevant medical records. Moreover, these physicians did not adequately explain why appellant’s right hip condition was not solely due to some nonwork-related cause, such as a traumatic incident, which occurred outside work.

For these reasons, appellant did not meet his burden of proof to establish that he sustained a right hip injury in the performance of duty on February 12, 1985.

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<sup>10</sup> See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

The August 1, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.<sup>11</sup>

Dated, Washington, DC  
July 10, 2002

Michael J. Walsh  
Chairman

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>11</sup> Appellant submitted additional evidence after the Office's August 1, 2001 decision, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).