

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA J. WINSTON and U.S. POSTAL SERVICE,
POST OFFICE, Birmingham, AL

*Docket No. 02-2108; Submitted on the Record;
Issued March 3, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that she sustained a disabling right knee condition on May 30, 2001 causally related to factors of her federal employment.

On May 30, 2001 appellant, then a 50-year-old sales and service associate, filed a claim alleging that on that date she tripped on a rug at the door of a room and fell on her right knee and hip. Appellant stopped work on June 27, 2001 and did not return. The employing establishment controverted appellant's claim noting that she had been on sick leave the week prior to the fall due to right knee swelling.

Appellant had been seen by Dr. Kelley Snow, an orthopedic surgeon, on May 21, 2001 with a three- to four-month history of swelling in her right knee, without history of trauma or prior similar events. Dr. Snow diagnosed a traumatic effusion of the right knee and she aspirated about 25 cc of pale yellow clear fluid for analysis. Appellant was seen again by Dr. Snow on May 29, 2001 and was found to be about 50 percent better but continued to have medial and lateral joint line popping and discomfort. Dr. Snow recommended a magnetic resonance imaging (MRI) scan for further diagnostic work-up.

The employing establishment indicated that appellant was on sick leave due to her right knee condition from May 21 to 29, 2001 and only returned to work on May 30, 2001. Following the May 30, 2001 fall, appellant finished her workday and did not seek medical treatment.

On May 31, 2001 appellant called Dr. Snow and reported the May 30, 2001 fall, noting that her knee was quite swollen but noting that the swelling had decreased significantly in just one day. Appellant continued to work.

On June 19, 2001 an MRI scan was performed, which was reported as showing a bone bruise or contusion of the lateral tibial plateau, possible strain or partial tear of the lateral collateral ligament and a tear of the anterior horn of the lateral meniscus with degenerative changes elsewhere in the meniscus. Causal relationship was not discussed.

Appellant stopped work on June 24, 2001 and underwent an arthroscopic subtotal right lateral meniscectomy with lateral femoral and tibial laser chondroplasty.

By report dated August 9, 2001, Dr. Snow reviewed appellant's history leading to the arthroscopy and opined:

“Based on [appellant's] symptoms before her fall at work, I suspect she had an internal derangement at that time, but her fall at work may have contributed to an extension of the tear and an increase in her symptoms. [Appellant] did complain of more pain after the fall than she did before.”

Dr. Snow noted that appellant was not reexamined after the fall as her preinjury right knee pathologic findings were more than adequate to justify an MRI scan.

By decision dated September 6, 2001, the Office of Workers' Compensation Programs rejected appellant's compensation claim on the grounds that she had not met her burden of proof to establish that she sustained a right knee injury on May 30, 2001. The Office found that appellant had not submitted any rationalized medical evidence relating her condition after the fall, either by causation or aggravation, to the fall itself, as opposed to the preexisting right knee pathology and that Dr. Snow had indicated that appellant's right knee internal derangement was preexisting.

Appellant disagreed with this decision and requested a review of the written record. Appellant described her right knee condition before and after the fall on May 30, 2001 and claimed that the right knee pain was so bad after the fall that she called Dr. Snow and went back to her office to get the fluid drawn from the knee and to ask for an MRI scan.

Accompanying her request for review, appellant submitted medical progress notes from Dr. John Holcombe, a family practitioner, who saw appellant on May 3, 2001 and diagnosed “knee injury -- possible cartilage tear.” Mr. Holcombe noted the presence of right knee pain, which radiated from the knee to the ankle. He also saw appellant on May 21, 2001 for her right knee condition and diagnosed “knee pain and swelling -- etiology not clear.”

A radiology report obtained for Dr. Holcombe identified joint effusion without evidence of significant bony abnormality.

By decision dated June 4, 2002, the hearing representative affirmed the September 6, 2001 decision finding that the reports from Dr. Snow were inadequate to establish that appellant sustained a right knee condition necessitating arthroscopic surgery, causally related to a May 30, 2001 employment incident. The hearing representative noted that Dr. Snow removed the fluid from appellant's right knee prior to the alleged employment incident and that, although she spoke with appellant by telephone on May 31, 2001 and again on June 7 and 18, 2001 she did not actually examine appellant until June 27, 2001, when the arthroscopic surgery was performed. The hearing representative noted that Dr. Snow indicated that appellant did complain of more pain after the May 30, 2001 employment fall than she did before the fall, but also that she did not mention any complaints of pain in her May 31, 2001 medical progress note dictation, only that the right knee was swollen but that “the swelling was decreased significantly after one day.” No change in appellant's right knee condition was appreciated by examination and the

June 19, 2001 MRI scan was justified on her physical findings prior to the fall. No rationalized medical opinion relating the MRI scan findings to the May 30, 2001 fall was provided, which the hearing representative found diminished the probity of appellant's claim, particularly when the preinjury findings were sufficient to warrant the MRI scan. The hearing representative found that any worsening of appellant's right knee condition was based solely on her subjective complaints of increased pain, without any medically documented objective changes or clinical findings discerned to relate her condition after May 30, 2001 to the fall. The hearing representative found that, therefore, any opinion relating the June 19, 2001 MRI scan findings to the May 30, 2001 fall were speculative in nature and of diminished probative value.

The Board finds that appellant has failed to establish that she sustained a disabling right knee condition on May 30, 2001 causally related to factors of her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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.² These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³ Appellant had established these requirements.

However, to determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place and in the manner alleged.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

In this case, the Office accepts that appellant experienced the employment incident at the time and place and in the manner alleged. Appellant alleged on her initial claim form that she

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁴ *John J. Carlone*, 41 ECAB 354 (1989). To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); *see also George W. Glavis*, 5 ECAB 363 (1953).

⁵ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

fell at work on May 30, 2001 and this is supported by the employing establishment. Therefore, the first element is satisfied. However, appellant has failed to submit rationalized medical evidence sufficient to establish that the fall on May 30, 2001 caused or aggravated any right knee condition, for which she underwent arthroscopic surgery.

Dr. Snow identified no objective changes in appellant's right knee attributable to the May 30, 2001 incident, noting only subjective complaints of increased pain and, therefore, her reports do not support causation or worsening of appellant's right knee condition due to that incident. This is particularly relevant in light of the extensive preexisting symptomatology, which included fluid accumulation and total disability due to right knee pathology. She opined that appellant's fall at work "may have contributed to an extension of the tear and an increase in her symptoms." The Board notes that this comment is couched in speculative terms. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.⁶ Further, the Board has stated that medical opinions not fortified by medical rationale are of little probative value. As Dr. Snow's opinions are speculative and without medical rationale explaining the causal relationship of appellant's right knee pathology to her May 30, 2001 employment fall, they are insufficient to establish appellant's claim. Likewise, the preinjury reports from Dr. Holcombe do not support worsening of appellant's condition after May 30, 2001 due to the employment incident. None of the medical evidence submitted contains a well-rationalized medical opinion that supports causation or aggravation of her right knee condition, related to the May 30, 2001 employment incident, or documents any May 30, 2001 related objective right knee changes.

No other relevant rationalized medical evidence has been submitted.

As appellant has failed to provide any rationalized medical evidence documenting the right knee pathologic effects of the May 30, 2001 fall, she has failed to establish her claim.

⁶ See *Vaheh Mokhtarians*, 51 ECAB 190 (1999); *Thomas A. Faber*, 50 ECAB 566 (1999).

Accordingly, June 4, 2002 and September 6, 2001 the decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 3, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member