

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM D. SMITH and DEPARTMENT OF THE TREASURY,
U.S. SECRET SERVICE, Baltimore, MD

*Docket No. 02-2064; Submitted on the Record;
Issued May 6, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he sustained a knee injury causally related to his federal employment.

On May 10, 2002 appellant, then a 45-year-old operation support technician, filed a traumatic injury claim alleging that, on May 9, 2002, while working in New York City, he was struck by a taxicab while crossing the street and injured his right knee. He did not stop work.

Appellant submitted with his traumatic injury claim a prescription note from Bellevue Hospital Center and an accident information form, which indicated that an accident occurred on May 9, 2002 at the location described on the claim form.

In a letter dated June 6, 2002, the Office of Workers' Compensation Program advised appellant that the evidence submitted in support of the claim was insufficient and requested that he submit additional evidence.

In response, appellant submitted a May 23, 2002 narrative report from Dr. Frank Catanzariti, a Board-certified orthopedic surgeon, who stated: "[appellant] is having pain in his knee. He has tenderness in his knee from an injury that he had back on May 9, [2002] when he was struck by a car and he landed directly on his knee." In the report, Dr. Catanzariti indicated that he recommended a magnetic resonance imaging (MRI) scan of appellant's knee and would see him back once the procedure was complete.

Appellant also submitted a letter in which he indicated that an MRI scan was performed. He further indicated that he had some difficulty obtaining medical records from Bellevue Hospital where he was treated for his knee injury and that he would forward them to the Office upon receipt. Appellant later submitted a discharge report from a medical facility dated May 9, 2002, which diagnosed appellant with right knee trauma.

By decision dated July 15, 2002, the Office denied appellant's claim for compensation on the grounds that appellant failed to establish that he sustained a knee injury causally related to the employment incident.

The Board finds that the case is not in posture for a decision.

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

The Board finds that, while appellant has not established with the medical evidence of record that he sustained an injury in the performance of duty as alleged, he has submitted sufficient medical evidence to warrant additional development by the Office. Appellant has submitted a discharge report from a medical facility dated May 9, 2002, which diagnosed appellant with right knee trauma. He also submitted a May 23, 2002 report from Dr. Catanzariti diagnosing right knee pain, which he noted that appellant sustained when he landed on his knee during an automobile accident on May 9, 2002.⁴ While the report of appellant's physician is insufficiently rationalized to meet appellant's burden of proof in establishing causal relationship, such evidence is consistent with appellant's allegations regarding the claimed knee injury, which he attributes to a May 9, 2002 automobile accident, to warrant further development by the Office.⁵ The Office has not presented any controverting medical evidence.

On remand of the case, the Office should prepare a statement of accepted facts and refer appellant to an appropriate Board-certified specialist for a well-rationalized medical opinion regarding the causal relationship between the incident and the claimed knee condition. Following this and any other development that the Office deems necessary for a proper adjudication of the case, the Office shall issue an appropriate decision.

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).

⁴ Appellant submitted new medical evidence on appeal. However, the Board cannot consider new evidence on appeal; see 20 C.F.R. § 501.2(c). This decision of the Board does not preclude appellant from submitting such evidence to the Office as part of a reconsideration request pursuant to 5 U.S.C. § 8128(a).

⁵ See *John J. Carlone*, 41 ECAB 345, 358 (1989).

The July 15, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further action consistent with this decision and order.

Dated, Washington, DC
May 6, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member