

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN W. DONOHUE and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, TX

*Docket No. 03-2026; Submitted on the Record;
Issued November 26, 2003*

DECISION and ORDER

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

The issue is whether appellant sustained an injury in the performance of duty on December 10, 2002 as alleged.

On December 10, 2002 appellant, then a 60-year-old letter carrier, filed a traumatic injury claim, alleging that on that date he pulled his right calf when he stepped off a stair in the course of his federal employment. The employing establishment controverted the claim.

By letter dated December 18, 2002, the Office of Workers' Compensation Programs requested that appellant submit further information. In response, appellant submitted a December 16, 2002 attending physician's report by Dr. Linden Dillin, a Board-certified orthopedic surgeon, who noted that appellant had right knee pain and right calf pain which he believed was caused or aggravated when appellant stepped down off a stair while delivering mail. Dr. Dillin further indicated that x-rays showed Osgood Schlatter's disease and mild degenerative changes in the ankle and restricted appellant to sedentary work only. Appellant also submitted Dr. Dillin's progress note dated December 12, 2002.

By decision dated January 23, 2003, the Office denied appellant's claim, finding that the evidence submitted was insufficient to establish that the December 10, 2002 incident occurred as alleged and no medical evidence provided a diagnosis which could be connected to the claimed event.

By letter dated March 10, 2003, appellant requested reconsideration. He submitted a report of a venous ultrasound of the right lower extremity conducted on December 12, 2002 which showed no sonographic evidence of deep venous thrombosis in the right leg. A

January 17, 2003 magnetic resonance imaging scan of the right knee was interpreted as showing subtle areas of edema. Appellant further submitted a March 4, 2003 medical report by Dr. Dillin, wherein he opined:

“Unequivocally the time course of events and your coming to see me within two days of the injury established that you had an injury to the flexor hallucis longus tendon in the right calf. Since then [appellant’s] symptoms have improved and the clinical syndrome has resolved, again proving a relatively acute injury as you had stated.

“It is my medical opinion that you suffered an injury to your right calf and right knee at the time you reported your injury, the injury date being December 10, 2002.”

By decision dated June 6, 2003, the Office found that, although appellant had submitted evidence sufficient to establish that he had an employment incident as alleged, the medical evidence did not establish that the claimed medical condition resulted from the accepted event. Accordingly, the Office denied benefits.

The Board finds that appellant has not established that he sustained an injury in the performance of duty on December 10, 2002, as alleged.

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 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 the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether “fact of injury” has been established. There are two components involved in establishing fact of injury which must be considered. 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.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to

¹ 5 U.S.C. §§ 8101-8193.

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

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

⁴ *Elaine Pendleton*, *supra* note 2.

establish that the employment incident caused personal injury.⁵ The medical evidence required to establish causal relationship is, generally, rationalized medical opinion evidence.⁶

In the instant case, the Office determined that appellant filed a timely claim and established that he was a federal employee who sustained an employment incident in the performance of duty. However, the Office denied appellant's claim as it found that the medical evidence did not contain a diagnosis of a current condition related to appellant's employment factors and, therefore, appellant did not meet his burden of proof. The Board notes that, although Dr. Dillin indicated that appellant sustained an injury to his right calf and knee, he did not specifically state the diagnosis. The fact that appellant had pain in his right knee and calf is not a diagnosis, but merely a listing of symptoms. Appellant had opportunities to present more medical evidence, both in response to the Office's letter dated December 18, 2002, and when he requested reconsideration. Although appellant submitted additional evidence, Dr. Dillin did not provide a narrative medical report addressing the December 10, 2002 incident, his findings on examination of appellant, the nature and extent of any condition sustained as a result of the incident or the period of any disability. The medical evidence of record is not sufficient to establish that the December 10, 2002 incident resulted in an injury.

The decisions of the Office of Workers' Compensation Programs dated June 6 and January 23, 2003 are hereby affirmed.

Dated, Washington, DC
November 26, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁵ *Id.*

⁶ *Id.*