

On April 29, 2002 appellant, then a 37-year-old immigration inspector, filed a notice of traumatic injury, Form CA-1, alleging that he sustained an injury to his right knee on April 12, 2002 when he raised from his chair at work and hit his right knee on his desk. On the reverse

side of the CA-1 form, appellant's supervisor stated that in accordance with her conversation with appellant her knowledge of the facts about his injury agree with his statements.

On June 11, 2002 appellant submitted May 6, 2002 therapy progress notes by Yvonne Heredia, a therapist with the El Paso Orthopedic Surgery Group and Center for Sports Medicine.

By letter dated June 19, 2002, the Office requested additional medical information from appellant. Specifically, dates of examination and treatment, a history of injury given to the doctor by appellant, a detailed description of findings, results of x-rays and laboratory tests, a diagnosis and course of treatment and a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury, which was crucial to his claim. Appellant was allotted 30 days to provide the information requested but did not respond within the time allotted.

By decision dated July 15, 2002, the Office denied appellant's claim finding that the incident occurred as alleged. However, the medical evidence failed to establish that an injury resulted from the April 12, 2002 employment incident. Therefore, fact of injury was not established.

By letter dated July 31, 2002, appellant requested an oral hearing by an Office hearing representative which was held on May 12, 2003.

Subsequent to the hearing, on May 19, 2003, the hearing representative received from appellant a February 12, 2002 report by Dr. Jose A. Alicea, a Board-certified orthopedic surgeon, who reported his finding on examination of appellant that day. Dr. Alicea stated that appellant was seen for complaints of right knee pain from falling into a hole at work on February 12, 2002. Also received was a May 15, 2003 statement by appellant who discussed an injury to his right knee on February 11, 2002 for which he filed a claim which was assigned number 16-2032973. Appellant also stated that his claim for an injury to his right knee on April 12, 2002 was assigned number 16-2036478. He contended that his medical evidence for his second claim was filed under the wrong claim number.

In an April 15, 2002 report, Dr. Alicea stated that he saw appellant that day for a followup for right knee pain. He stated that "[Appellant] was doing well from his knee injury but he got an exacerbation of pain over the last 3 days...." Dr. Alicea reported his findings of "minimal medial joint line tenderness. There is no ligamentous instability." Dr. Alicea diagnosed internal derangement of the knee.

An April 24, 2002 imaging report interpreted by Dr. James H. Algeo, Jr., noted a history of popping, clicking and pain and revealed:

"There is a small joint effusion with irregularity of the cartilage of the lateral patellar facet and subchondral bone marrow changes in the patella. The cartilages of the medial patellar facet contain increased signal as well. The femoral trochles appears intact.

"There is no other significant bone marrow abnormality...."

Dr. Algeo's impression was chondromalacia patella, especially of the lateral patellar facet.

In an April 26, 2002 report, Dr. Alicea stated, "[Appellant] presents today for followup. He continues to have some pain particularly when he knees (sic) and stands. There is some evidence of chondromalacia patella particularly in the lateral facet. His symptoms have improved with the Vioxx." Dr. Alicea diagnosed internal derangement of knee.

In a May 14, 2003 report, Dr. Alicea stated that appellant was seen that day for followup. Dr. Alicea stated that he saw appellant last year for two different injuries to his right knee but did not document it properly on his note of April 16, 2002. He stated that appellant provided information that he had injured the anterior aspect of his knee with a desk at work three or four days prior to seeing him on April 16, 2002. Dr. Alicea stated that appellant had completely recovered from the February 2002 injury resulting from stepping in a hole "and the other one gave him a little bit more trouble in early April when he sustained a direct blow to the anterior aspect of the knee."

By decision dated August 5, 2003, the Office hearing representative affirmed the prior decision finding that the incident occurred on April 12, 2002 as alleged, but that the medical evidence was insufficient to establish a causal relationship between a diagnosed condition and the employment incident on April 12, 2002.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitations 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>1</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>2</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>3</sup> In the instant case, there is no dispute that the claimed incident occurred at the time, place and in the manner alleged. Appellant alleged that when he got up from his chair at work he hit his right knee on his desk.

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<sup>1</sup> *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>2</sup> *David J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>3</sup> *Elaine Pendleton*, *supra* note 1.

The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>4</sup> The Office found that the medical evidence was insufficient to support that appellant sustained an injury as a result of the incident.

### ANALYSIS

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty on April 12, 2002 as alleged.

In support of his claim, appellant submitted a February 12, 2002 report by Dr. Alicea, a Board-certified orthopedic surgeon, who reported his finding on examination of appellant that day. Dr. Alicea stated that appellant was seen for complaints of right knee pain from falling into a hole at work on February 12, 2002. The report was irrelevant as it dealt with an alleged February 12, 2002 injury under Office File No. 16-2032973, which is not the subject of this appeal.

In an April 15, 2002 report, Dr. Alicea stated that he saw appellant that day for a followup for right knee pain. He stated that “[Appellant] was doing well from his knee but he got an exacerbation of pain over the last three days....” Dr. Alicea reported his findings of “minimal medial joint line tenderness. There is no ligamentous instability.” Dr. Alicea diagnosed internal derangement of the knee. The report does not provide a history of an April 12, 2002 employment incident, or address a causal relationship between a diagnosed condition and the April 12, 2002 employment incident.

An April 24, 2002 imaging report interpreted by Dr. Algeo revealed chondromalacia patella, especially of the lateral patellar facet. The only history of injury was limited motion, popping, clicking and pain. The report does not provide a history of injury, or address a causal relationship between a diagnosed condition and the April 12, 2002 employment incident.

In an April 26, 2002 report, Dr. Alicea diagnosed internal derangement of the right knee. He did not provide a history of an April 12, 2002 employment incident or address a causal relationship between a diagnosed condition and the employment incident.<sup>5</sup>

In a May 14, 2003 report, Dr. Alicea stated that appellant was seen that day for followup. He stated that he saw appellant last year for two different injuries but did not document it properly on his note of April 16, 2002. Dr. Alicea stated that appellant provided information that he had injured his knee with a desk at work three or four days prior to seeing him on April 16, 2002. He stated that appellant had completely recovered from the February 2002 injury, but there is no record of appellant being discharged from care for the February 11, 2002

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<sup>4</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *see* 20 C.F.R. § 10.110(a).

<sup>5</sup> The reports of Dr. Alicea dated February 12, April 15, 24 and 26, 2002 were of further diminished probative value as he did not sign them. *See James A. Long*, 40 ECAB 538 (1989); *Merton J. Sills*, 39 ECAB 572 (1988).

injury. Although the report provides a history of injury occurring on or about April 12, 2002, Dr. Alicea did not provide a diagnosis, relate the diagnosis to the April 12, 2002 employment incident, nor state whether appellant was disabled for work as a result. This is important especially since he first mentions the April 12, 2002 employment injury over a year following the occurrence of the employment incident.

Appellant failed to provide sufficient medical evidence to establish that he sustained an injury in the performance of duty on April 12, 2002. Therefore, the Office properly denied appellant's claim.

### **CONCLUSION**

The Board finds that appellant failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on April 12, 2002 as alleged. Therefore, the Office properly denied appellant's claim.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 5, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.<sup>6</sup>

Issued: February 11, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> The Board notes that appellant submitted medical evidence with his appeal. As this evidence was not previously considered by the Office prior to its decisions of July 15, 2002 and August 5, 2003, the evidence represents new evidence which cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(a). Appellant may resubmit this evidence to the Office, together with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b).