

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAMIRO VILLEGAS and DEPARTMENT OF JUSTICE,
FEDERAL PRISON SYSTEMS, Anthony, N.M.

*Docket No. 97-1169; Submitted on the Record;
Issued December 28, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT:

The issue is whether appellant sustained an injury in the performance of duty.

On July 27, 1996 appellant, then a 47-year-old correctional counselor, filed a notice of traumatic injury and claim for compensation, Form CA-1, alleging that on that same date he slipped on a wet floor causing his left knee to twist inward. Appellant described the nature of his injury as a swollen left knee. Appellant stopped work on July 29, 1996 and returned to work on August 6, 1996.

By letter dated November 7, 1996, the Office of Workers' Compensation Programs advised appellant that the information submitted with his claim was insufficient to establish that he sustained an injury on July 27, 1996. The Office further advised appellant that, if he received any medical treatment for his alleged injury, he should arrange for the submission of the relevant medical records within 20 days. Moreover, appellant was advised of the specific type of information a physician's report should contain.

By decision dated January 14, 1997, the Office denied appellant's claim on the basis that the evidence failed to establish that he sustained a work-related injury as alleged. In an accompanying memorandum, the Office explained that while, the initial evidence of record supported the fact that appellant actually experienced the claimed incident at the time, place and in the manner alleged, the evidence of record failed to establish that a medical condition resulted from the accepted incident inasmuch as no medical evidence had been received by the Office.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

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

¹ 5 U.S.C. § 8101 *et seq.*

individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed under the Act, that an injury was sustained in the performance of duty, and that any disability or specific condition for which compensation is being claimed is causally related to the employment injury.² These are the essential elements of each and every 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 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.⁴ As previously noted, the Office accepted the fact that appellant actually experienced the claimed accident as alleged.

The second component is whether the employment incident caused a personal injury.⁵ This latter component generally can be established only by medical evidence. To establish a causal relationship between the claimed condition, as well as any attendant disability, 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.⁶ An award of compensation may not be based upon surmise, conjecture or speculation. Neither the fact that appellant’s condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish a causal relationship.⁷

In the instant case, at the time the Office rendered its decision on January 17, 1997, it had not received any medical evidence regarding appellant’s alleged left knee condition. Appellant was previously advised of the need for such evidence, and afforded the opportunity to submit such evidence. However, appellant did not submit medical evidence, which the Board may

² *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *Id.*

⁶ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁷ *Victor J. Woodhams*, *supra* note 3.

consider,⁸ addressing the cause of his claimed condition. In view of the absence of any rationalized medical opinion evidence, appellant has failed to meet his burden of demonstrating that the July 27, 1996 employment incident resulted in a personal injury. Accordingly, the Office properly denied appellant's claim for compensation.

The January 17, 1997 decision of the Office of Workers' Compensation Programs denying appellant compensation is hereby affirmed.

Dated, Washington, D.C.
December 28, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁸ Although the record currently contains two medical reports prepared by Dr. Luis H. Urrea, II, the Office did not receive this evidence until after it had issued its January 17, 1997 decision. Moreover, as the Board's review is limited to the evidence of record which was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c). The record before the Board also contains evidence pertaining to another claim involving a different claimant.