

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARRELL H. MEADOWS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS MEDICAL CENTER, Kansas City, Mo.

*Docket No. 96-2249; Submitted on the Record;
Issued September 11, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained injuries in the performance of duty on September 19 and November 10, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim² including the fact that the individual is an "employee of the United States" within the meaning of the Act,³ that the claim was timely filed within the applicable time limitation period of the Act,⁴ 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.⁵

Establishing whether an injury, traumatic or occupational, was sustained in the performance of duty as alleged, *i.e.*, "fact of injury," and establishing whether there is a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed, *i.e.*, "causal relationship," are distinct elements of a compensation claim. While the issue of "causal relationship" cannot be established until "fact of injury" is established, acceptance of fact of injury is not contingent upon an employee proving a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed. An employee may establish that an injury occurred in the performance

¹ 5 U.S.C. §§ 8101-8193.

² See *Daniel R. Hickman*, 34 ECAB 1220 (1983); 20 C.F.R. § 10.110.

³ *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

⁴ 5 U.S.C. § 8122.

⁵ See *Daniel R. Hickman*, *supra* note 2.

of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.⁶

To accept fact of injury in a traumatic injury case, the Office of Workers' Compensation Programs in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.⁷ The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.⁸

The Board finds that appellant has not established that he sustained injuries in the performance of duty on September 19 and November 10, 1995.

By decisions dated June 20, 1996, the Office found, and the evidence establishes, that appellant was an employee of the United States on September 19 and November 9, 1995, and that he experienced the employment factor alleged in his claims for injuries on those dates: slips and falls. The Office denied both claims on the basis that the medical evidence did not establish that the September 19 and November 9, 1995 incidents resulted in a personal injury within the meaning of the Act.

Appellant has not met his burden of proof to establish an injury on September 19 or November 9, 1995 because he has not submitted medical evidence establishing that he sustained an injury on either of those dates. In a report dated January 3, 1996, the date appellant first sought medical care following either of the two claimed injuries, Dr. Richard Kimmell, a family practitioner, set forth a history of the September 19 and November 9, 1995 incidents, and diagnosed a sprain of the right knee versus a possible internal derangement. With regard to whether this was the result of an industrial injury, Dr. Kimmell answered, "Possibly," which is not sufficient to meet appellant's burden of proof.⁹ In a report dated January 9, 1996, Dr. David A. Tillema, a Board-certified orthopedic surgeon, also noted appellant's September 19 and November 9, 1995 employment incidents and his persistent problems since the second incident, but this report did not contain a diagnosis or an opinion that appellant had any medical condition related to the described employment incidents. In a report dated January 23, 1996, Dr. Robert J. Takacs, an orthopedic surgeon, stated that a magnetic resonance imaging (MRI) scan showed bruising or marrow changes in the medial condyle of appellant's right knee and what might be a meniscal tear, but did not indicate that these conditions were related to the September 19 or November 9, 1995 employment incidents. After diagnostic arthroscopy on March 5, 1996 showed no full thickness meniscal tear, Dr. Takacs diagnosed degenerative joint

⁶ As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; *see Frazier V. Nichol*, 37 ECAB 528 (1986).

⁷ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *Charles A. Massenzo*, 30 ECAB 844 (1979).

disease of the right knee, but did not indicate this condition was caused or aggravated by the implicated employment incidents. Lacking medical evidence that either the September 19 or November 9, 1995 employment incidents caused or aggravated any medical condition or that the diagnostic testing done was for the effects of these incidents, appellant had not met his burden of proof.

The decisions of the Office of Workers' Compensation Programs dated June 20, 1996 are affirmed.

Dated, Washington, D.C.
September 11, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member