

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD H. WALLACE and U.S. POSTAL SERVICE,
POST OFFICE, Wilmington, Del.

*Docket No. 98-274; Submitted on the Record;
Issued June 15, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on July 19, 1996, as alleged.

On June 12, 1997 appellant, then a 46-year-old letter carrier, filed a traumatic injury claim alleging that on or about July 19, 1996, he sustained an injury to his left knee when he fell on the wet ground while delivering mail. Appellant lost no time from work.

Along with his claim form, appellant submitted numerous documents associated with a prior claim that appellant filed for occupational disease on March 25, 1997 in Office of Workers' Compensation Programs File No. A3-0223382. These documents included a notice of occupational disease, filed on December 8, 1996, in which appellant noted the onset of problems with his left knee and claimed that this condition was due to standing long periods and walking on ice, snow and mud with heavy weights of mail and parcels. Appellant also submitted a letter dated January 14, 1997, wherein he stated that the soreness in his left leg developed after the last procedure on his right knee; that appellant had been protecting it by carrying most of the burden of walking, standing and climbing steps on the left side; and that over a period of time the left side developed stiffness, soreness and pain. Appellant's occupational disease claim was denied in a decision dated March 15, 1997, wherein the Office noted that the evidence was insufficient to establish a causal relationship between the alleged employment factors and the medical condition, because the medical evidence of record did not explain how the employment factors caused appellant's condition.

Appellant also submitted a December 19, 1996 report in which Dr. Myung Soo Lee, a Board-certified radiologist, after administering a magnetic resonance imaging (MRI) scan of the left knee, concluded that appellant suffered from a complex tear of the posterior horn of the medial meniscus, chondromalacia, moderate amount of joint effusion, hypertropic degenerative spurs, and a medial popliteal cyst. In addition, appellant submitted a letter dated May 29, 1997 in which Dr. Brent R. Noyes, a Board-certified orthopedic surgeon, noted his belief that

appellant's knee troubles "are related to an acute incident," that this was indicated in the MRI scan which revealed a complex tear of the medial meniscus, and that the medial meniscus tear and acuteness of his symptoms and "perhaps" surrounding synovitis is consistent with the fall on his left knee in a hyperflexed position in July 1996.

On June 13, 1997 Marianne Farren, an injury compensation specialist, for the employing establishment, filed a controversion of the traumatic injury claim, contending that appellant had not established that an injury resulted from his work as alleged. She explained that medical evidence was not contemporaneous with the alleged injury; that the medical evidence did not establish an injury; that he delayed in seeking medical treatment; and that he did not timely report the injury to his supervisor.

In response to the Office's request for further information, appellant submitted an earlier report by Dr. Noyes, dated January 31, 1997, in which Dr. Noyes noted that he treated appellant when he previously injured both of his knees in 1994. Dr. Noyes stated that appellant subsequently underwent three surgeries on his right knee due to this injury, and that due to the injury and the subsequent three surgeries, appellant related that he had a tendency to overuse his left leg in compensation for his right leg. Dr. Noyes also noted that appellant told him that in July 1996, while delivering mail, he slipped in the wet grass and in protection of his right knee, fell with his left knee in a hyperflexed position, which was followed by immediate pain and swelling. Dr. Noyes stated that his initial examination "revealed a tenderness over the posterior horn of the medial meniscus, reduced range of motion, and a positive McMurrays." Dr. Noyes also reviewed Dr. Lee's MRI report, and recommended that appellant undergo an arthroscopic medial meniscectomy. Dr. Noyes opined that appellant's left knee chondromalacia and degenerative changes were consistent with previous injuries, age, weight and activities, and that the medial meniscus tear was consistent with the fall on his left knee in a hyperflexed position in July 1996.

In further response to the Office's request for factual information, appellant submitted a statement, dated June 26, 1997, wherein he contended that his left leg was pinned under his buttocks when he fell on wet grass on July 19, 1996. Upon returning to the employing establishment, appellant stated that he verbally notified his supervisor and requested claim forms, to which the supervisor purportedly replied, "we'll do it tomorrow." Appellant went on to say that on the following day after completing his "job," he again requested claim forms as he was scheduled to be on annual leave the next two weeks. Appellant stated that his supervisor then replied, "we'll do it when you get back and back date it. I know you want to get out of here."

In response to specific questions propounded by the Office, appellant asserted that on July 19, 1996, he fell on the ground soaked with rain, and his left leg was pinned. He stated that afterwards, he thought it was just a strain so he tried to "walk it off," but when he returned to the employing establishment, he informed his supervisor and requested the necessary compensation forms, which he did not receive.

By decision dated July 28, 1997, the Office denied appellant's claim on the grounds that he did not establish that he sustained an injury on July 19, 1996, as alleged.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an injury in the performance of duty on July 19, 1996.

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 alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.²

An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.³ An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁴ An employee has not met his burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁵ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain timely medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.⁶ However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁷

In this case, appellant has not established fact of injury because inconsistencies in the evidence cast serious doubt as to whether the specific event or incident occurred at the time, place and in the manner alleged.⁸ Although appellant now contends that he injured himself when he fell on the wet ground on July 19, 1996, appellant originally contended that the injury to his left knee was sustained as a result of the cumulative effect of his duties as a letter carrier, including walking, standing and climbing steps. If, in fact, this incident occurred as alleged, it is

¹ 5 U.S.C. §§ 8101-8193.

² *Louise F. Garnett*, 47 ECAB 639, 643 (1996); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Louise F. Garnett*, *supra* note 2; *John G. Schaberg*, 30 ECAB 389, 393 (1979).

⁴ *Louise F. Garnett*, *supra* note 2 at 644; *John Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

⁵ *Linda S. Christian*, 46 ECAB 598, 601 (1995); *Eric J. Koke*, 43 ECAB 638, 644 (1992).

⁶ *Louise F. Garnett*, *supra* note 2 at 644; *Samuel J Chiarella*, 38 ECAB 363, 366 (1987).

⁷ *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

⁸ *See Gene A. McCracken*, 46 ECAB 593, 597 (1995) (where the Board found that discrepancies and inconsistencies in appellant's statements describing the injury created serious doubt that the injury was sustained in the performance of duty.)

reasonable to surmise that appellant would have mentioned this incident in his earlier occupational disease claim. Furthermore, although appellant contends that the incident occurred on July 19, 1996, there is no evidence in the record that appellant sought treatment for this incident until the alleged incident is noted by Dr. Noyes in his report dated January 31, 1997, over six months after the incident allegedly occurred. The Board further notes that appellant finished his shift on the day of the alleged incident. Finally, the Board notes that appellant took 10 months to file a claim for injuries sustained as a result of a specific traumatic injury, a claim which was filed three months after the Office declined his claim for benefits as a result of occupational disease. Appellant's inconsistent statements regarding the causation of his left knee condition, in combination with the fact that he completed his shift the day of the alleged incident, he waited almost one year to file his claim, and the lack of medical reports contemporaneous to the alleged accident create an uncertainty as to the time, place and in the manner in which appellant sustained his knee injury.

In view of the inconsistencies in the evidence regarding how appellant sustained his injury, the Board finds that there is insufficient evidence to establish that appellant sustained an injury in the performance of duty as alleged.

The decision of the Office of Workers' Compensation Programs dated July 28, 1997 is affirmed.

Dated, Washington, D.C.
June 15, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member