

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLOTTE E. LEIGH and U.S. POSTAL SERVICE,
POST OFFICE, Arlington, VA

*Docket No. 99-2139; Submitted on the Record;
Issued September 21, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury that occurred in the performance of duty as alleged.

Appellant, then a 51-year-old city letter carrier, filed a traumatic injury claim on July 10, 1998 alleging that on May 30, 1998 she sustained an injury to her right knee while delivering mail. She stated that she was walking on a lawn with a slight incline when she felt a crack in her calf. Appellant also noted injury to her upper right knee area. On the reverse side of the claim form, her supervisor indicated that his knowledge of the facts about appellant's injury correlated to those alleged by appellant. Appellant stopped work on the day of the alleged incident and returned on June 3, 1998.

Appellant submitted a CA-17 duty status report dated July 15, 1998 from Dr. Phillip Kempf, an attending physician, who noted that she sustained a right knee meniscal tear. He indicated only that the injury was caused by her employment and he approved limited-duty work. The Office of Workers' Compensation Programs subsequently requested additional factual and medical information from appellant regarding her claim and afforded her 30 days for a response.

Appellant submitted a narrative statement in which she indicated that she was delivering mail on May 30, 1998 when the injury occurred. She stated: "I was walking up to this ladies' yard to deliver her mail. I felt and heard something go 'crack.' I stopped momentarily. Just as I went to take the next step, the pain was so bad it ran all the way up my hip."

Appellant also submitted a report from Dr. Kempf, dated July 10, 1998, who related appellant's history of the injury, *i.e.*, that on May 30, 1998 she suddenly felt a pop in her knee and experienced severe right knee and leg pain. He indicated that appellant received emergency medical treatment that day at Pentagon City Hospital, where she was told she sustained an acute gastrocnemius strain and a ruptured plantar tendon. Dr. Kempf noted that appellant was seen by Dr. Eric Dawson, an attending physician, who informed her that she sustained an acute medial

meniscal tear that was confirmed by a magnetic resonance imaging (MRI) scan. Dr. Kempf diagnosed a right knee medial meniscal injury and noted her need for arthroscopic surgery.

Appellant further submitted duty status and medical reports from Dr. William Dorn, a Board-certified orthopedic surgeon, dated from July 13 to October 5, 1998 evidencing treatment of her right knee injury. Dr. Dorn reported in his July 13, 1998 report that appellant sustained injuries to the right knee in the course of her employment when she was walking on her route and experienced popping of the right knee as it gave way. He found an internal derangement of the right knee with possible tears of the medial meniscus and possible loose bodies or synovial folds. On August 31, 1998 Dr. Dorn reported that, appellant was walking when her right knee gave way and she felt a “snapping sound” of the right knee. He further reported that the MRI scan revealed a grade II or III tear of the medial meniscus. Subsequent reports from Dr. Dorn evidenced examination and treatment for the medial meniscus injury.

Appellant further submitted medical reports from Dr. Dawson dated June 9 and 30, 1998 and July 7 and September 1, 1998; and physical therapy progress notes. Dr. Dawson, in his September 1, 1998 letter, stated that appellant suffered an injury on the course of her job. He related appellant’s history of the injury, specifically that the incident occurred on May 30, 1998 as she was walking on her route and stepped down on her right leg on uneven footing and her leg twisted beneath her and that she received medical treatment for pain and swelling. Dr. Dawson noted that appellant had never previously had injuries or problems involving the right knee. He stated:

“[Appellant] had obvious signs of a knee injury to the right.... She has chondromalacia patella right knee, which is a bruise to the cartilage behind the kneecap or patella and she had obvious signs of right medial meniscus injury, possibly a tear. Even on initial evaluation there was effusion present with tenderness to medial joint line palpation.... She told us that she wished to attempt to continue at work but we had grave doubts as to whether the [appellant] would be able to tolerate this because of the nature of the injury. This patient suffered an injury on the job, where the mechanism of injury was such that her foot was planted on a relatively unstable surface with a rotatory motion to the foot where energy was transferred to the knee. This is the mechanism of meniscal tears and indeed was the case for her ... findings were consistent with her having an acute tear to the medial meniscus as well as chondromalacia patella.... The patient basically has history, findings as well as objective criteria for the above-mentioned injury.”

By decision dated November 5, 1998, the Office denied appellant’s claim on the grounds that she had not established that an injury occurred at the time, place and in the manner alleged. The Office found in the record a conflicting history of appellant’s injury and, therefore, that she had not established fact of injury.

The Board finds that appellant has established that she sustained an injury in the performance of duty as alleged.

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 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.¹ 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.²

The Office, in determining whether an employee actually sustained an injury in performance of duty, first analyses 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.³ The second component is whether the employment incident caused a personal injury and this generally can only be established 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.⁴

An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the 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 subsequent course of action. An employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious doubt on 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 the failure to obtain 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

Appellant has submitted sufficient evidence to establish that the incident occurred as alleged in the performance of duty on May 30, 1998 and that she sustained a right knee condition as a result. Appellant alleged in her narrative statement that in the course of walking and delivering mail she felt and heard something go "crack." She then stated that she stopped

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Elaine Pendleton*, *supra* note 1.

⁴ *John M. Tornello*, 35 ECAB 234 (1983).

⁵ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

⁶ *Dorothy Kelsey*, 32 ECAB 998 (1981).

momentarily and as she began to take the next step she felt immediate pain. Dr. Kempf reported on July 10, 1998, that appellant suddenly felt a pop in her knee and noted severe right knee and leg pain and on July 13, 1998. Dr. Dorn reported that appellant was walking on her route and experienced popping of the right knee as it gave way. It is by comparison of these statements that the Office found a conflicting history of injury and denied appellant compensation. Appellant's statement, however, concerning how, where and when her injuries occurred, is uncontroverted. Appellant and her treating physicians have stated that she heard a snap or crack in the area of her right knee while walking on her mail route. Although Dr. Dawson elaborated on the history of the injury in his September 1, 1998 report by indicating that appellant was walking on uneven footing and twisted her leg beneath her, this account appears to vary only by describing the manner in which she sustained an injury. Appellant had previously indicated on her claim form that the yard in which the injury occurred had a slight incline and his statement that she was walking on uneven footing is consistent with that fact.

The Board finds that the record establishes appellant provided her physicians with a work history consistent with that alleged in her claim, which substantiates the occurrence of the incident. Furthermore, appellant was medically treated for injuries on May 30, 1998, the day of the alleged injury, for an acute gastrocnemius strain and a ruptured plantar tendon and later diagnosed with a right meniscal tear. Appellant, therefore, has established that the incident occurred in the time, place and in the manner alleged. Appellant has also submitted medical evidence that she sustained a right knee injury as a result of this incident. The Office has not, however, evaluated the medical evidence to determine what diagnosis is causally related to the injury and whether appellant sustained disability as a result of this incident.

On remand, the Office shall determine whether appellant met her burden of proof to establish a causal relationship between the employment incident and the condition for which compensation was claimed. After such development as the Office deems necessary, the Office shall determine the period or periods of disability, if any, and whether appellant is entitled to continuation of pay and/or payment of appropriate medical expenses.

The decision of the Office of Workers' Compensation Programs dated November 5, 1998 is set aside and the case is remanded for further proceedings consistent with the decision of the Board.

Dated, Washington, DC
September 21, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member