

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH S. BELL and U.S. POSTAL SERVICE,
POST OFFICE, Kansas City, MO

*Docket No. 99-2230; Submitted on the Record;
Issued September 7, 2000*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has met her burden of proof in establishing that she sustained a knee injury in the performance of duty on September 11 and November 19, 1998.

The Board has duly reviewed the case on appeal and finds that appellant has not met her burden of proof.

Appellant, then a 47-year-old postal clerk, filed a traumatic injury claim on November 27, 1998 alleging that she twisted her left knee on September 11 and November 19, 1998 while performing work duties. She alleged on her claim form that on September 11, 1998 she was coming off the keying station, when she stepped down and twisted her left knee. After clocking in on November 19, 1998, appellant alleged further that she took a step towards her supervisor and heard something snap in her left leg. On the reverse side of the claim form, her supervisor, Charles Johnson, indicated that he had seen appellant limping and asked about her condition and appellant stated that she had an old injury unrelated to work that was bothering her. In a narrative statement dated December 1, 1998, he further detailed the conversation he had with appellant in September 1998. Mr. Johnson stated that, after appellant indicated that her knee condition was not work related, she related it to an injury she sustained 13 years prior. He stated further that appellant called in sick in October or early November and indicated that her knee had caused her to miss work. Mr. Johnson related that appellant returned to work with a knee brace with no restrictions, however, when she began to experience problems with the brace, she requested a reduction of hours. He also stated that, after some time had passed, appellant stated that she wanted to file a claim for a work-related injury, alleging that she injured her knee stepping down off of the consoles of a SPBS machine at work. Mr. Johnson stated that he reminded appellant of their previous conversation regarding her knee condition and appellant stated to him that she wanted to file anyway. Appellant's employing establishment later controverted her claim on that basis. She stopped work on November 20, 1998 and returned to light duty on November 27, 1998, the day she filed the claim.

The Office of Workers' Compensation Programs held a telephone conference with appellant on January 6, 1999 to determine the factual information necessary to decide the issue of fact of injury in her case. She alleged during the call that on September 11, 1998 she was stepping down from the keying station and twisted her left leg, which began to swell and caused her pain. Appellant also alleged that she informed her supervisor of the injury but declined to file a claim as she had twisted her knee before, which had resolved. She alleged, as she had on the claim form, that on November 19, 1998 she was stepping toward her supervisor when she felt a snap in her knee. Appellant explained that she suffered a previous knee injury 13 years prior, when she fell down stairs; however, she had had no recurrent pain. She also indicated that she had begun wearing a knee brace after the September 11, 1998 injury and when asked whether she had informed her supervisor that her knee pain resulted from the 13-year-old injury as alleged, she denied having done so.

The Office received a medical report from Dr. Robert Paul, an osteopath, dated November 25, 1998 in which he reported that appellant presented him with a new injury to her left knee sustained on November 20, 1998 and stated that "she twisted it once again." Appellant reportedly related that this injury was most likely the result of a work injury while coming down stairs approximately four to six months ago. Dr. Paul, however, in further noting that she also suffered a fall approximately eight years ago, indicated that he could not pinpoint the date of this injury.

By decision dated February 17, 1999, the Office denied appellant's claim based on the January 6, 1999 telephone conference and the factual and medical evidence of record, which failed to establish that she sustained an injury due to the claimed accidents as required by the Federal Employees' Compensation Act. The Office referred to appellant's supervisor's statement that she did not report an injury at the time alleged in the claim but did report pain due to a previous nonwork-related knee injury. It also noted that Dr. Paul reported on November 25, 1998 that the injury likely occurred while appellant was walking down stairs four to six months prior to that date.

Appellant, through her representative, requested reconsideration of the prior decision in a letter dated June 6, 1999 and received by the Office on June 8, 1999. In support of her request, appellant submitted new evidence in the form of an outpatient report from Dr. Paul dated November 25, 1998, which indicated that appellant pulled her knee on November 20, 1998.

By decision dated June 17, 1999, the Office denied modification of its prior decision. After a merit review, the Office found that Dr. Paul's history of the injury in the outpatient report varied from his earlier submitted report and the history alleged by appellant in her claim, as Dr. Paul indicated in the outpatient report that appellant pulled her knee on November 20, 1998. The Office therefore found that this inconsistency in the history of injury diminished the probative value of his statement and further, that Dr. Paul failed to address the issue of causation required in establishing appellant's claim.

An employee seeking benefits under the 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

Due to appellant's inconsistent statements regarding her injury, the conflicting histories of injury provided by Dr. Paul and the allegations made by the employing establishment, the Board finds that appellant has not established that she sustained the injuries as alleged. Regarding the alleged September 11, 1998 incident, appellant reported on her claim form that she was coming off the keying station when she stepped down and twisted her left knee. Mr. Johnson, appellant's supervisor alleged that in September appellant informed him after he inquired about her limping that she had an old injury unrelated to work. Appellant alleged during the Office conference call that she informed her supervisor of the September injury but did not file a claim as she had twisted her knee before. Mr. Johnson indicated that it was some

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).

time in November before appellant indicated that she wanted to file a claim for a work-related injury, alleging that she injured her knee stepping down off of the consoles of a SPBS machine. The record reflects a lack of confirmation of the alleged September incident, as the employing establishment submitted that appellant related her knee condition at that time to a 13-year-old injury. Furthermore, there is no medical evidence substantiating her claim of a September work incident. Appellant did not report the alleged September work injury to her supervisor until November, when she was reminded that she had previously related her knee condition in September to an injury outside of her employment. Such lack of confirmation and late notification of the injury casts doubt on whether appellant's injury occurred as alleged. Regarding the alleged November 19, 1998 injury, appellant reported that after clocking in that day, she took a step towards her supervisor and heard something snap in her left leg. She submitted a medical report from Dr. Paul dated November 25, 1998 in which he reported that appellant twisted her knee on November 20, 1998 and related that she believed this injury was most likely related to a work injury while coming down stairs approximately four to six months prior. Contrary to the factual history provided in his November 25, 1998 report, Dr. Paul reported in an outpatient note with the same date that appellant had pulled her knee on November 20, 1998. The evidence of record is unclear as to whether appellant actually experienced the November employment incident, which is alleged to have occurred. The medical evidence provides inconsistent dates of injury, as appellant alleged that the incident occurred on November 19, 1998 and Dr. Paul noted November 20, 1998 as the date of injury. Moreover, appellant indicated that her work-related injury occurred while stepping down onto her foot; however, Dr. Paul indicated in one report that she twisted her knee and in another report Dr. Paul noted that appellant pulled her knee. He further stated that appellant believed the injury also related to an unreported work incident four to six months prior, while coming down stairs. The unresolved discrepancies regarding whether the September and November injuries occurred at the time, place and in the manner alleged, cast serious doubt on the veracity of appellant's claim. She has not offered any explanation regarding the discrepancies in dates and history of the injuries. As appellant has not provided consistent histories of her alleged injuries or given a compelling explanation as to the inconsistencies in her claim, she has failed to establish that an employment incident has occurred as alleged.

The decisions of the Office of Workers' Compensation Programs dated June 17 and February 17, 1999 are affirmed.

Dated, Washington, D.C.
September 7, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member