

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALMA E. ADAMS and DEPARTMENT OF JUSTICE,
BUREAU OF PRISONS, Lexington, KY

*Docket No. 00-2570; Submitted on the Record;
Issued November 13, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained an injury while in the performance of duty on December 27, 1998; and (2) whether appellant sustained an injury while in the performance of duty on October 27, 1999.

On December 27, 1998 appellant filed a claim alleging that she injured her knee while that day removing small drops of dried wax from the floor.¹ Lieutenant D.S. Kulick, appellant's supervisor, stated that appellant's verbal report of the incident indicated that her knee popped while she was bending down to pick something up.

The employing establishment controverted the claim on the basis that appellant provided conflicting stories about how she was injured and the way she allegedly injured her knee was not within her job description.

In a December 29, 1998 memorandum, Lt. Kulick stated that several inmates asked appellant how she was because "they stated she had hurt her back scrubbing the office floor."

In a January 6, 1999 memorandum, Lieutenant Frank St. Clair stated that appellant told him that she had not injured herself cleaning, but had injured her knee when "she had gotten down on her knees to pick up some items of personal property the inmates should not handle.

Dr. William Haney, appellant's attending Board-certified internist and pediatrician, provided notes dated December 29, 1998 and January 6 and 21, 1999 stating that appellant could not work due to her right knee injury, which was secondary to a work injury.

The employing establishment submitted a January 12, 1999 memorandum from David Nestor, chief physical therapist, who indicated that he was asked to address appellant's complaints of knee pain on December 27, 1998. He noted that appellant stated she had injured

¹ This claim was assigned claim number 06-0737057.

her knee when she bent down to pick something up and to show an inmate orderly where to wax and clean the floor. Appellant told Mr. Nestor that she had previously injured her knee “at her previous duty station.”

By letter dated October 4, 1999, the Office informed appellant that the information of record was insufficient to establish her claim for her December 27, 1998 injury and advised her what medical and factual evidence to submit.

On October 27, 1999 appellant, then a 42-year-old correctional officer, filed a traumatic injury claim alleging that she hurt her left shoulder and calf when her leg gave out.² The employing establishment controverted the claim.

In an October 27, 1999 employment injury assessment report, G. Delabounaye, a physician’s assistant, diagnosed right calf contusion and probable left shoulder strain. He noted that the injury occurred when appellant’s left leg gave out while she was going down the stairs.

By decision dated November 9, 1999, the Office denied appellant’s December 27, 1998 claim on the basis that she failed to establish that the event actually occurred. The Office found the conflicting evidence regarding the alleged event cast doubt.

By letter dated November 15, 1999, the Office informed appellant that the evidence of record was insufficient to establish her claim, advised her what medical evidence was required to support her claim and gave her 30 days to submit the necessary information.

In response to the Office’s request, appellant submitted an October 29, 1999 work excuse stating that she could return to work within one to two days and a November 3, 1999 note by Dr. Chambers stating that she could return to work on November 8, 1999.

By decision dated December 23, 1999, the Office denied appellant’s claim on the basis that she failed to establish fact of injury in her October 27, 1999 claim. The Office found that the incident occurred but that there was no medical evidence showing an injury due to the incident.³

The Board finds that appellant failed to establish that she has not sustained an injury in the performance of duty on December 27, 1998.

An employee seeking benefits under the Federal Employees’ Compensation Act⁴ 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

² This claim was assigned claim number 06-0740038.

³ Appellant submitted evidence subsequent to the issuance of the Office’s decision. Inasmuch as the Board’s review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant’s subsequently submitted evidence. 20 C.F.R. § 501.2(c).

⁴ 5 U.S.C. §§ 8101-8193.

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 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.⁶

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.⁷ 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.⁸

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 her subsequent course of action. An employee has not met her burden of proof when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁹ 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.¹⁰

Appellant has provided various stories about how she sustained the injury on December 27, 1998 incident. Lt. Kulick, appellant's supervisor, stated that appellant had verbally indicated her injury had occurred while bending over to pick something up. Later, he noted that several inmates indicated that appellant told them she had hurt her back "scrubbing the office floor." Lt. St. Clair stated that appellant told him that she had injured her knee when "she had gotten down on her knees to pick up some items of personal property. "When he inquired about her limping in September she told him that she had an old injury unrelated to work. Mr. Nestor noted appellant's injury as occurring when she bent down to show an inmate orderly

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁷ *Elaine Pendleton*, *supra* note 5.

⁸ *John M. Tornello*, 35 ECAB 234 (1983).

⁹ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

¹⁰ *Dorothy Kelsey*, 32 ECAB 998 (1981).

where to wax and clean the floor. Lastly, Dr. Haney provided no history how the injury occurred.

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 validity of appellant's claim. She has not offered any explanation regarding the discrepancies in the history of her injury. Therefore, the Board finds that appellant has failed to establish that an employment incident occurred as alleged.

Next, the Board finds that appellant did not sustain an injury while in the performance of duty on October 10, 1999.

In this case, the Office accepted that appellant was a federal employee, that she timely filed her claim for compensation benefits and that the workplace incident occurred as alleged. The question, therefore, becomes whether this incident caused an injury.

The October 27, 1999 report by a physician's assistant, an October 29, 1999 emergency room note and a November 3, 1999 note by Dr. Chambers are all insufficient to establish that the October 10, 1999 incident caused injury. First, the October 27, 1999 report from a physician's assistant is insufficient because a physician's assistant is not a "physician" within the meaning of the Act and, therefore, is not competent to give a medical opinion.¹¹ The October 29, 1999 excuse note and the November 3, 1999 note by Dr. Chambers established that appellant was disabled but contain no diagnosis of her condition or an opinion on the cause of her condition. They, therefore, are insufficient to establish appellant's claim.

Part of appellant's burden of proof includes the submission of medical evidence establishing that the claimed condition is causally related to employment factors.¹² The Office advised appellant of the evidence that she must submit to establish her claim, but appellant did not submit the requisite evidence. Therefore, appellant has not met her burden of proof in establishing her claim.

¹¹ See *Diane Williams*, 47 ECAB 613 (1996); *Shelia A. Johnson*, 46 ECAB 323 (1994); *Shelia Arbour (Victor E. Arbour)*, 43 ECAB 779 (1992).

¹² *Earl D. Price*, 39 ECAB 1053 (1988).

The February 8, 2000 and December 23, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
November 13, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member