

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD Q. INGERSON and U.S. POSTAL SERVICE,
POST OFFICE, Springfield, MO

*Docket No. 02-1630; Submitted on the Record;
Issued July 16, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty on or about November 21, 1998.

On January 6, 1999 appellant, then a 50-year-old mailhandler, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on November 22, 1998,¹ he collided with another employee, which caused pain to his right knee. In support thereof, appellant submitted notes from Cox Medical Center indicating that he had been seen on November 21, 1998 for right knee pain and notes indicating that he was seen for a sprain/strain of his right knee by St. John's Health Systems on December 7, 1998. The employing establishment controverted the claim.

By letter to appellant dated January 19, 1999, the Office of Workers' Compensation Programs requested further information. In response appellant submitted progress notes by Dr. Michael P. Nachtigal, a Board-certified orthopedic surgeon, dated December 7 and 21, 1998 and January 4, 1999, indicating that he treated appellant for a probable degenerative medial meniscus tear or a chondral injury in the medial aspect of the knee.

By decision dated February 23, 1999, the Office denied appellant's claim as it found that the evidence of file was insufficient to establish that he experienced the claimed event, at the time, place and in the manner alleged.

By letter dated March 8, 1999, appellant requested an oral hearing. At the hearing, held on September 22, 1999, appellant testified that he was having trouble with joint pain in his right knee on November 20, 1999 which he mentioned to his supervisors. Appellant testified that on the following day, he collided with another employee and that after that incident his knee got progressively worse. Appellant noted that his treating physician was Dr. Nachtigal.

¹ Appellant later indicated that the injury occurred on November 21, 1998.

After the hearing, appellant submitted an October 12, 1999 report by Dr. Stephen Armstrong, a Board-certified internist, who indicated that appellant had been under his care since September 1998 with Achilles' tendinitis and inflammatory arthritis. He noted that appellant has had persistent pain and swelling in his right knee that has not responded to treatment.

In a decision dated December 14, 1999, the hearing representative found that, while appellant had presented evidence to substantiate that an incident occurred on November 21, 1998, he has not submitted sufficient medical evidence to substantiate that an injury resulted from this incident. Therefore, the hearing representative affirmed the Office's February 23, 1999 decision.

By letter dated February 18, 2000, appellant requested reconsideration. In support thereof, appellant submitted a January 10, 2000 medical report by Dr. Nachtigal, wherein he stated:

"It is my impression that he continues to suffer with some degenerative changes in both his knees. The right knee still may have a mechanical problem within it related to the injury that occurred on November 21, 1998, which has yet to be really resolved. There has been some question as to whether or not this knee problem arose from this injury and I reviewed my notes from December 7, 1998. At that time, it was fairly clearly indicated in the patient's history that his knee pain did start with the injury of November 21, 1998, when he had a collision with another employee."

On April 20, 2000 the Office reviewed appellant's case and found that the evidence submitted was not sufficient to warrant modification of the prior decision.

By letter dated July 21, 2000, appellant again requested reconsideration. In support thereof, appellant submitted arthroscopic pictures. Appellant also submitted a May 10, 2000 report by Dr. Nachtigal wherein he stated:

"I have been asked to write a letter for the above-named patient regarding the injury to his right knee. It is my understanding and I have tried to make this fairly clear in my note of January 10, 2000 that [appellant] did have some underlying arthritis in his knee, but he had a significant increase in his symptoms after an injury he sustained on November 21, 1998. We have not performed any arthroscopy to make a definite diagnosis of what is currently bothering his knee, but it has definitely bothered him when he has done more strenuous work. My current understanding is that he has been required to do more work than he was having to do between the time of his injury and the first of the year. He attributes an increasing amount of symptoms in his right knee due to his increase in work.

"It is difficult to say with any medical certainty whether or not he is having symptoms from degenerative changes in his knee or from a more acute cartilage and meniscal injury from November 21, 1998 as these both may be playing a factor in his current disability. It is, however, my impression that he is much

more functional if he does not have to be on his feet as he was required around the first of the year when he was having more problems with his ankle.”

Appellant also submitted a progress note by Dr. Nachtigal from May 24, 2000 indicating that appellant had a sprain of right knee. He indicated that it was his impression that appellant probably had degenerative meniscus tear or chondral injury to his knee, and that an arthroscopy was indicated, which he tentatively scheduled for June 2, 2000. On October 20, 2000 the Office reviewed appellant’s case and found that the evidence submitted was not sufficient to warrant modification.

By letter dated January 22, 2001, appellant requested reconsideration for a third time. In support thereof, appellant submitted a post-arthroscopy letter from Dr. Nachtigal dated January 3, 2001 wherein he indicated that appellant underwent an arthroscopy of his right knee and was found to have, in addition to degenerative changes in his knee, a meniscus tear, which he thinks “very likely could have come from a work-related injury that was not directly related to or affected by the degenerative changes in his knee.” He noted that, since performing the partial meniscus resection of the knee, appellant has “done much better.” In response to a letter from the Office dated March 19, 2001, appellant submitted his hospital records from St. John’s Regional Health Center for June 2, 2000, which included Dr. Nachtigal’s operative note from that date. By decision dated April 23, 2001, modification was denied because the medical evidence did not establish that the work incident on November 21, 1998 caused an injury.

By letter dated January 22, 2002, appellant again requested reconsideration. New evidence submitted included a note that appellant was given an injection of Depomedrol and Xylocaine to his right knee on May 10, 2000 and notes from St. John’s indicating that appellant was seen on May 15, 2000 for right knee pain and was not to work until seen by an orthopedist. Appellant also submitted an August 24, 2001 medical report wherein Dr. Armstrong noted that appellant had been under his care since September 14, 1998 for treatment of inflammatory arthritis involving the knees and other peripheral joints, and that, in addition, he had sustained an injury to the right knee in November 1998 which had been managed by Dr. Nachtigal. In a decision dated March 21, 2002, the Office denied modification, as the evidence did not demonstrate a medical condition causally related to the November 28, 1998 work injury.

The Board finds that this case is not in posture for decision.

An employee seeking benefits under the Federal Employees’ Compensation Act² 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 as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of 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.⁵ The Office found that appellant had established that an incident occurred as alleged.

The second component is whether the employment incident caused a personal injury and 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 causal relationship.⁶ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

In the instant case, appellant submitted numerous reports by his treating physician, Dr. Nachtigal, who noted that appellant's knee pain started with his injury of November 21, 1998. In his May 10, 2000 report, he indicated that, although appellant had underlying arthritis of his knee, he had a significant increase in his symptoms after an injury he sustained on November 21, 1998. After appellant had an arthroscopy on his knee, Dr. Nachtigal indicated that he found a meniscus tear which "very likely could have come from a work-related injury that was not directly related to or affected by the degenerative changes in his knee." Furthermore, Dr. Armstrong, who treated appellant for his inflammatory arthritis, noted that appellant sustained an injury to his right knee in 1998 which was managed by Dr. Nachtigal. However, neither Dr. Nachtigal nor Dr. Armstrong satisfactorily stated the history of appellant's injury, or explained how the incident caused the injury. Therefore, these opinions are not sufficient to establish a causal relationship between appellant's right knee injury and the alleged accident of November 21, 1998.

⁴ *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *See Elaine Pendleton*, *supra* note 3; *see also Duane B. Harris*, 49 ECAB 170, 173 (1997).

⁶ *See John M. Tornello*, 35 ECAB 234 (1983); 20 C.F.R. § 10.110(a).

⁷ *Duane B. Harris*, *supra* note 5.

The decision of the Office of Workers' Compensation Programs dated March 21, 2002 is affirmed.

Dated, Washington, DC
July 16, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member