United States Department of Labor
Employees' Compensation Appeals Board

LAURIEANN M. BABBIE, Appellant	)	
and	)	**Docket No. 05-1091**
	)	**Issued: August 18, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Rouse Point, NY, Employer	)	

Appearances:
John F. Miles, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 18, 2005 appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated July 22, 2004 and January 21, 2005, finding that she did not establish an injury on November 12, 2002 causally related to her federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on November 12, 2002 as alleged.

FACTUAL HISTORY

On July 29, 2003 appellant, then a 33-year-old part-time flexible letter carrier, filed a traumatic injury claim alleging that on November 12, 2002, at approximately 9:00 a.m., she fell on ice while delivering mail in the performance of duty and injured her legs. On the reverse of the form, appellant's supervisor stated that on November 12, 2002 appellant spent the entire day

inside working as a clerk and that the ambient temperatures on the alleged date of injury and the preceding day were above freezing.

In a statement dated July 30, 2003, appellant asserted that she had provided the date-of-injury to the best of her recollection and further asserted that she advised the postmaster of the injury on the date it occurred during November 2002.

Robert S. Armstrong, postmaster, submitted a statement dated July 30, 2003 and alleged that he had "no recollection of ever having been informed of any accident suffered by [appellant] while on duty … in November 2002 or any other date since her employment began in July 2002."

By letter dated August 6, 2003, the Office requested additional factual and medical evidence from appellant in support of her claim. On May 15, 2003 Dr. Charles Phillip Volk, a Board-certified orthopedic surgeon, stated that he had not examined appellant in 11 months. She reported severe pain in her left knee and had not been able to straighten it for two months. Dr. Volk noted that she had been carrying letters which worsened her condition. In a note dated August 8, 2003, he provided appellant's history of injury stating, "[Appellant] is a 33-year-old lady who has had problems since she was doing some hip hop dancing back on November 10, 2001 when she heard something pop and has had pain since then." Dr. Volk noted that she underwent an arthroscopic procedure on April 26, 2002 on her left knee, but that she continued to have pain. Additional diagnostic testing demonstrated a progression of the cartilage lesion to involve the bone. Dr. Volk recommended surgery.

Appellant submitted an April 26, 2002 operative report for a left knee arthroscopy with partial medial meniscectomy and debridement of lateral tibial condylar lesion, together with other medical documentation pertaining to this condition.

Dr. Volk completed a form report on August 15, 2003 diagnosing a torn medial meniscus in the left knee and listing the history of injury as appellant hurt her knee while dancing. He completed a second form report on August 27, 2003 and listed her history of injury as falling on the job while delivering mail. Dr. Volk indicated with a check mark "yes" that appellant's condition was caused or aggravated by an employment activity as her pain worsened after her fall at work on November 12, 2002.

In a report dated September 11, 2003, Dr. Volk repeated the history of initial left knee injury in November 2001. He noted that he did not examine appellant from June 12, 2002 until May 15, 2003. Dr. Volk stated that in May 2003 appellant reported injuring herself in November 2002, "when she fell delivering mail as part of her job." He also noted that she had been "carrying letters and made worse by this…." Dr. Volk diagnosed an osteochondral lesion of the left lateral tibial plateau which had worsened since appellant's surgery on April 26, 2002. He stated:

> "The most logical explanation is that the work injury which occurred on November 12, 2002 either knocked the cartilage loose or aggravated the small amount of deterioration she had in her cartilage previously. For this amount of

damage to occur over the past 12 months would most likely indicate that this was extremely aggravated by her fall or in fact caused by the most recent fall."

The Office requested additional medical evidence on September 24, 2003. In a report dated December 9, 2003, Dr. Volk noted that appellant had advised him that she fell on both knees and that he believed that her left knee osteochondral lesion occurred as a result of a fall she sustained on November 15, 2003. He further stated that her right knee pain may have been from over compensation and lack of use of her left leg, but that diagnostic testing demonstrated chondromalacia of the right knee.

By decision dated January 30, 2004, the Office denied appellant's claim, finding that she failed to submit the necessary factual and medical evidence to establish that the employment incident and resulting injury occurred as alleged.

Appellant, through her representative, requested reconsideration on April 21, 2004. She alleged that the employment incident occurred on November 15, 2002 rather than November 12, 2002 as originally stated. Appellant submitted an affidavit dated April 19, 2004 from Bryan Conroy, an employee of Imperial Optical, stating that on some date which he could not recall, appellant informed him that she had fallen and suggested that salt should be placed on icy areas outside the building in which Imperial Optical was located.

In response to queries by the Office, Mr. Armstrong stated that appellant did not inform him of her injury or imply that her knee condition was employment related until she left the claim form on his desk in July 2003. He also obtained weather records indicating that there were no temperatures below freezing during the week of November 12 and 15, 2002.

By decision dated July 22, 2004, the Office denied modification of its January 30, 2004 decision, finding that the evidence was not sufficient to establish that appellant's injury occurred on November 15, 2002 as alleged.

In a report dated August 11, 2004, Dr. Howard M. Black, a Board-certified orthopedic surgeon, provided a history that appellant injured both knees when she slipped and fell on ice in November 2002. He diagnosed patellafemoral chondromalacia of the right knee and early degenerative arthritis in the left knee as well as right sciatica.

Appellant requested reconsideration on October 8, 2004. In support of her request, she submitted weather information from November 11 through 15, 2002, indicating the temperature fell to near and below freezing from 2:53 a.m. until 7:53 a.m. and again at 4:53 p.m. on November 15, 2002.

By decision dated January 21, 2005, the Office denied modification of the July 22, 2004 decision, finding that appellant had not submitted sufficient medical evidence to establish that she sustained an injury in November 2002 as alleged.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[2]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. The employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. 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 where there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[3]

ANALYSIS

The Board finds that appellant has not submitted sufficient evidence to establish that she sustained an injury at the time, place and in the manner alleged. Appellant initially alleged that she sustained an injury on November 12, 2002 on her claim form dated July 29, 2003. Her supervisor disputed this date of injury and appellant's subsequently alleged injury on November 15, 2002. However, her subsequent actions and the medical evidence cast serious doubt regarding whether the injury occurred as alleged.

The Board notes that there is no contemporaneous medical evidence. The record indicates that appellant first sought medical treatment from Dr. Vale, a Board-certified orthopedic surgeon, on May 15, 2003 six months after the alleged injury occurred. He described her history of injury as carrying letters which had aggravated her preexisting knee condition. Dr. Vale's report did not discuss a traumatic injury or describe a fall on November 15, 2002. On August 8, 2003 he stated that appellant's left knee injury resulted from hip hop dancing on November 10, 2001. Dr. Vale completed a form report on August 15, 2003 diagnosing a torn medial meniscus in the left knee and listed the history of injury as appellant dancing. He did not mention any employment activities, nor did he mention any specific employment-related event

[1] 5 U.S.C. §§ 8101-8193.

[2] *Juanita Pitts*, 56 ECAB ___ (Docket No. 04-1527, issued October 28, 2004).

[3] *Id.*

as causing or contributing to her current condition. In fact, he did not discuss appellant's alleged traumatic injury in November 2002 until August 27, 2003, more than nine months after the injury allegedly occurred, after several office visits and approximately a month after appellant initially filed her claim.

The Board finds that appellant's failure to seek timely medical treatment within six months of her alleged injury and her failure to mention the alleged employment incident of falling on ice to her physician within three months after seeking treatment, casts serious doubt on the validity of her claim. The Board further notes that the postmaster denied knowledge of the alleged injury and that the witness statement she submitted does not provide any date that appellant reported an injury.[4]

Appellant did not timely report her claimed injury, continued to work without apparent difficulty after she sustained the claimed injury, did not seek medical attention for six months and did not report her alleged injury to her physician for an additional three months after seeking treatment. Her conduct is not consistent with her claimed injury and casts serious doubt on the validity of her claim.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in November 2002, as alleged.

[4] *Midchelle Kunzwiler*, 51 ECAB 334, 335-36 (2000).

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2005 and July 22, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 18, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board