United States Department of Labor
Employees' Compensation Appeals Board

FREDERICK L. MORRIS, Appellant	)	
and	)	**Docket No. 05-469**
	)	**Issued: May 17, 2005**
DEPARTMENT OF DEFENSE, PRODUCE BUYING OFFICE, Avon, MA, Employer	)	

Appearances:
Frederick L. Morris, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 20, 2004 appellant filed a timely appeal from the December 6, 2004 merit decisions of the Office of Workers' Compensation Programs, which denied his claims for compensation for failure to establish fact of injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review these two decisions.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on or about July 28 or August 3, 2004, as alleged.

FACTUAL HISTORY

On September 15, 2004 appellant, then a 47-year-old supply systems analyst, filed two identical claims for compensation alleging that he injured his right knee in the performance of duty on July 28 and August 3, 2004. He stated: "Injury occurred Aug[ust] 3, [20]04 at the above location. Cause work station desk support sticks out under the table. When I turned, smashed my knee. Desk support cannot be seen from desk top." He described the nature of his injury as

follows: "(R) (right knee) reported to office manager Cheryl Wilcox. Informed her what happened. Unable to walk for several minutes."[1]

On the back of appellant's claim form, Susan Seislove, a supervisory commodities logistics specialist, stated that appellant never informed his supervisor that he had sustained an injury or bumped his leg. In a September 17, 2004 statement, she added:

> "[Appellant] never notified the supervisor or any coworkers that he had hurt his leg. There were no witnesses to any incidents. A coworker stated that on one occasion [appellant] said in passing that he banged his leg on the desk support. He did not state that he was in pain nor did he request to leave work to go to the doctor's office. He did not request to submit an accident report at any time. [Appellant] resigned from the Agency effective August 7, 2004, so it is impossible to ascertain if his leg had sustained an injury after any of these incidents. The accident report was received on September 15, 2004."

On October 22, 2004 Ms. Seislove addressed the situation more fully:

> "[Appellant's] tenure with the Defense Supply Center Philadelphia (DSCP), duty station Avon, MA initiated on June 14, 2004 and ended on August 6, 2004 when [he] resigned from the DSCP, PBO Avon, MA to transfer to a position at the Department of the Army. During this time period, there was no verbal or written notification to the undersigned that [appellant] had banged or injured his knee during this [eight-]week period. The first time that this situation came to light was on September 15, 2004 when I was notified in the PBO Avon, MA office. I spoke with [Ms.] Wilcox who [appellant] claims he reported the accident to and she stated to me that she does not remember [his] banging his leg on three occasions. On only one occasion, Ms. Wilcox recalls [him] stating that he just banged his leg however it was interpreted as a passing comment and lacked the urgency that an injury had occurred. Ms. Wilcox stated that she was not in the room and was not an eye witness to the incident nor did she ever visually see [appellant's] knee. [Appellant] did not leave the workplace on any occasion to go to the doctors nor did he report that he sought medical assistance following any incident. The sick leave on record utilized by [appellant] is [eight] hours sick leave on July 2, 2004, for a food poisoning incident and July 27, 2004 for unexplained reasons. [Appellant] states that he informed the office manager at the end of August that he was having problems with his knee and needed to see a doctor. This was not an employee of DSCP who was notified of this as [appellant] left employment at PBO Avon, MA, on August 5, 2004. These are the facts that I know of them to the best of my knowledge."

[1] In a related appeal, Docket No. 05-0405, appellant filed a claim on September 15, 2004 for injuries sustained on June 17, July 28 and August 3, 2004. The Office adjudicated that claim based on the June 17, 2004 injury and instructed appellant to file separate claims for the later injuries. Appellant filed edited versions of his original claim which is now the subject of the present appeal.

David P. Lucht, Chief of Services, explained when he first learned of appellant's accident:

> "As the Chief of Services at PBO New England it is my direct responsibility to ensure that all employees are working in a safe and secure environment and when an accident is reported it is mandatory that the reporting office does so in a timely manner no later than 48 hours after the alleged accident. When I first received information concerning the accident to [appellant] it was five weeks after he had left the PBO New England and reported to his new duty station.
>
> "[Appellant] at no time reported his alleged accident to me. He made a short comment to the office manager Ms. Wilcox and [he] never asked for time off or did he ever request the proper accident form to fill out, [appellant] never complained to me about the accident and for the most part he just let it go until he reported to his new duty station. I did not receive any information about his alleged accident until five weeks later."

On October 25, 2004 Ms. Wilcox, a logistics specialist, offered her own account:

> "I do not remember an injury being reported three times. I remember one incident brought to my attention one time. [Appellant] told me that he did bang his knee on the desk support.
>
> "I cannot remember the exact words that he said or the exact date that he told me this. He told me that he put a cream-colored computer stand in front of the support so that he would see the support.
>
> "I do not remember him showing me his knee when the incident happened."

On September 27, 2004 Dr. Sean E. Rockett, a Board-certified orthopedic surgeon, related the following history: "The patient is a 47-year-old male who is complaining of anterior knee pain on the right after striking the knee against an arm under a desk. He has had worsening of his pain and difficulty sleeping." Findings on physical examination included tenderness along the medial aspect of the right patella and medial plica with no joint effusion or meniscal signs. X-rays showed no bony defect or other bony pathology. Dr. Rockett diagnosed right patella contusion with hypertrophic plica. He advised appellant to avoid repetitive squatting and standing.[2] The record contains a September 27, 2004 prescription note from Dr. Rockett for one pair of crutches.

On November 5, 2004 the Office advised appellant that the evidence received was insufficient to support his claim because the evidence failed to establish that he actually experienced the incident or employment factor alleged to have caused injury and because no

[2] The copy of the September 27, 2004 report appearing in appellant's record has been edited. The full report, which appears in the related appeal and is otherwise identical, includes past medical history, past surgical history, medications, allergies and the following additional complaints: "He has a positive movie theater sign. He does describe giving way and difficulty getting up and down from a knee or squat. The patient denied numbness or tingling."

physician's opinion on how his injury resulted in the diagnosed condition was provided. The Office asked appellant to respond to a list of questions and to submit a detailed narrative report from his physician indicating, among other things, whether and why the condition diagnosed was believed to be caused or aggravated by the claimed injury. The Office advised: "This evidence is crucial in consideration of your claim. You may wish to discuss the contents of this item with your physician."

Appellant explained the delay in filing his claim by noting that no one informed him of his rights or the need to complete and file a form. He insisted that he informed Ms. Wilcox on the date of injury what happened, when, where and what time. He stated that the immediate effect of the injury was acute pain: "the knee throbbed, I could not walk for a time, there was a red mark where I banged my knee on the support." Appellant stated that he moved a trash can in front of the support to prevent further injury. There was no visible blood, he stated, no visible cut or visible broken bone. He did not believe treatment was required; the pain subsided and the red mark eventually went away.

Appellant submitted a September 1, 2004 drawing of his workstation, which showed the location of the supports under his work counter. He stated: "I informed coworker and office manager when I banged my knee on these supports. The supports which are under the counter, can not be seen when seated at the work station."

In a decision dated December 6, 2004, the Office denied appellant's claim for an injury July 28, 2004 on the grounds that the evidence submitted was insufficient to establish that the event occurred as alleged. Specifically, the Office found that the factual history provided was inconsistent: "You state you injured your left knee on the work station desk supports; your employing agency state they were unaware of the incident until you completed the Form CA-1 on September 15, 2004, 2½ months subsequent to the alleged incident." The Office also noted that appellant provided no medical report with a history of an injury on July 28, 2004.

The Office issued a nearly identical decision on December 6, 2004 denying appellant's claim for an injury on August 3, 2004.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.[4]

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

Causal relationship is a medical issue,[5] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[6] must be one of reasonable medical certainty,[7] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[8]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[9] An employee's statement that an injury occurred at a given time and in a given manner is of great probative value however and will stand unless refuted by strong or persuasive evidence.[10]

ANALYSIS

Appellant claimed that he struck his right knee on a support below the counter of his workstation on July 28 and August 3, 2004 and there is no strong or persuasive evidence to the contrary. From the drawing he submitted of his workstation, it is easy to visualize how an employee struck his knee in such a way. Appellant asserted that he informed the office manager, Ms. Wilcox and there is no reason to doubt this, even if he did not inform the supervisory commodities logistics specialist. Ms. Wilcox remembered that appellant told her that he had struck his knee on the desk support, although her recollection was not specific as to time. That she did not recall multiple incidents is not a refutation. That there were no witnesses, or at least no witness statement submitted, is not an inconsistency. The fact that appellant did not seek prompt medical attention after the July 28 or August 3, 2004 incidents does not mean the incidents did not occur as alleged. The delay bears only on whether the incidents caused a physical condition or injury calling for prompt medical attention. Appellant explained that there was no obvious injury, no blood or cut that he could see and so he did not believe a doctor was required.

[5] *Mary J. Briggs*, 37 ECAB 578 (1986).

[6] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[7] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[8] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[9] *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984). *See also George W. Glavis*, 5 ECAB 363 (1953).

[10] *Virgil F. Clark*, 40 ECAB 575 (1989); *Robert A. Gregory*, 40 ECAB 478 (1989).

The Board finds that the evidence is sufficient to establish that appellant struck his right knee on a support below the counter of his workstation on July 28 and August 3, 2004. He has established that he experienced a specific event, incident or exposure occurring at the times, place and in the manner alleged. The question that remains is whether either of these incidents caused an injury.

Appellant has submitted no medical opinion evidence to support that the July 28 or August 3, 2004 incidents caused an injury. Although Dr. Rockett, the attending orthopedic surgeon, reported that appellant complained of anterior knee pain on the right after striking the knee against an arm under a desk, he gave no indication of when this incident occurred. He offered no opinion on whether either the July 28 or August 3, 2004 incident caused appellant's diagnosed right patella contusion with hypertrophic plica. To establish the critical element of causal relationship, appellant must submit a reasoned medical opinion explaining whether either of the established employment incidents caused his diagnosed right knee condition. Without such evidence, appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on July 28 or August 3, 2004. The Board will affirm both Office decisions dated December 6, 2004.

CONCLUSION

The Board finds that appellant struck his right knee on a support below the counter of his workstation on July 28 and August 3, 2004, as alleged. There is no evidence, however, that either of these incidents caused an injury. Appellant has not submitted reasoned medical opinion explaining how his diagnosed right knee condition was causally related to either incident. The Board will affirm the Office's December 6, 2004 decisions denying appellant's claims for compensation.

ORDER

IT IS HEREBY ORDERED THAT the December 6, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 17, 2005
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member