

**United States Department of Labor
Employees' Compensation Appeals Board**

B.T., Appellant

and

**U.S. POSTAL SERVICE, ELKINS PARK POST
OFFICE, Elkins Park, PA, Employer**

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**Docket No. 06-946
Issued: August 23, 2006**

Appearances:
Thomas R. Uliase, 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 February 9, 2006 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated April 12 and November 23, 2005 denying her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that she sustained an injury while in the performance of duty on December 9, 2002, as alleged.

FACTUAL HISTORY

On December 10, 2002 appellant, then a 49-year-old letter carrier, filed a claim for a recurrence of an injury she sustained on August 8, 1997.¹ She contended that on December 9, 2002 her knee was overworked because of a snow storm and became tender when she hyperextended it after slipping in the snow. Appellant indicated that this resulted in tendinitis in her right knee.

In a return to work slip, Dr. Richard A. Strulson, an osteopath, indicated that appellant had been under his care since December 10, 2002 and would be able to return to work on December 16, 2002. He listed her injury or illness as tendinitis in the right knee.

A June 25, 2004 magnetic resonance imaging (MRI) scan of appellant's right knee was interpreted as showing a tear of the lateral meniscus with cartilage loss of the lateral compartment, a small meniscus suggesting prior arthroscopic shaving and cartilage loss about the patella.

On August 27, 2004 appellant filed a second claim for a recurrence of the August 8, 1997 injury commencing December 9, 2002.²

Appellant received treatment from Dr. Thomas A. Corcoran, a Board-certified orthopedic surgeon. In a report dated August 2, 2004, he listed his impressions as status post right anterior cruciate ligament (ACL) reconstruction, right knee lateral meniscus tear and right knee osteoarthritis. Dr. Corcoran stated that this was a work-related injury and recommended further arthroscopic surgery. On August 17, 2004 he indicated that appellant's injury was caused by her employment in that she was attacked by a dog while delivering mail. On August 27, 2004 Dr. Corcoran performed an arthroscopy of her right knee, a chondroplasty of the patella, medial femoral condyle and lateral tibial plateau and a partial lateral meniscectomy. In an October 14, 2004 note, he indicated that appellant continued to experience right knee pain but had an excellent range of motion. He recommended a postoperative rehabilitation program.

In a letter dated October 26, 2004, the Office asked appellant for additional information, including medical evidence to support her claim. She submitted a written statement, received by the Office on November 29, 2004, noting that since a prior ACL repair her knee was never the same. Appellant noted that, in December 2002 she slipped on snow and fell off a curb and that the pain had been persistent since that time.

In a November 4, 2004 attending physician's report, an osteopath whose signature is illegible, indicated that appellant had a torn meniscus of the right knee. The date of injury was December 4, 2002 and a box checked indicating that appellant's condition was caused or aggravated by her employment, explaining "stopped a job and had pain."

¹ Although appellant indicated that the date of the initial injury was August 8, 1996, all subsequent documentation indicates that this injury occurred on August 8, 1997. The Board notes that the Office had accepted a right knee injury resulting from the August 8, 1997 employment injury in Office File No. 03-228755.

² The Board notes that appellant inadvertently listed December 9, 2004 as the date.

In a decision dated December 3, 2004, the Office adjudicated the claim as one for a new injury.³ It denied the claim as the medical evidence did not establish that appellant's right knee condition was related to the December 9, 2002 incident.

On December 22, 2004 appellant requested a review of the written record. She submitted additional reports from Dr. Corcoran dated from September 7, 2004 through March 14, 2005. These reports indicated that appellant was able to perform sedentary duty but she continued to have right knee pain with medial and lateral joint line tenderness.

By decision dated April 12, 2005, the hearing representative affirmed the denial of appellant's claim. It was accepted that she experienced the December 9, 2002 incident of slipping in the snow and that she was treated for right knee tendinitis on December 10, 2002. However, the hearing representative found that the medical evidence was insufficient to support the causal relationship between the meniscal tear and the accepted incident.

By letter dated September 22, 2005, appellant requested reconsideration and submitted a September 5, 2005 report from Dr. Corcoran. He first saw her at his office on August 12, 1997. At that time, appellant stated that, on August 8, 1997, while delivering mail, she was assaulted by a dog, pushed over a small fence and landed on concrete. At that time, physical examination showed no acute abnormality, but Dr. Corcoran's impressions were right knee hemarthrosis, right ACL tear and Grade 1 medial collateral ligament sprain. When he saw appellant on August 19, 1997, an MRI scan showed an ACL tear and bone marrow signal change in the femur. Appellant underwent a right ACL reconstruction on September 3, 1997. She returned to work on November 16, 1998. Appellant returned to Dr. Corcoran's office on August 2, 2004 and noted that in December 2002 she had slipped on ice while at work and twisted her knee, experiencing persistent pain since that time. Dr. Corcoran noted that appellant underwent surgery on August 27, 2004 and was treated postoperatively with physical therapy. He concluded:

"I feel that [appellant's] requirement for surgery in August 2004 is directly related to her initial work injury of [August 8, 1997]. I feel [that] [she] required surgery because she has postreconstruction degenerative changes and chondromalacia of the medial compartment, directly related to the fact that she does not have a native ACL.

"This would have caused symptoms that would have been indistinguishable to [appellant]. I do feel that she likely tore her lateral meniscus, twisting her leg, in December 2002. [Appellant] attempted to continue to tolerate these symptoms and they ultimately increased.

³ A recurrence of disability is defined by Office regulations as an inability to work caused by a spontaneous change in a medical condition resulting from a previous injury or illness without an intervening injury or new exposure to the work factors that caused the original injury or illness. If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken. 20 C.F.R. § 10.5(x); *see also Cecelia M. Corley*, 56 ECAB ___ (Docket No. 05-324, issued August 16, 2005).

“I feel that [appellant] would not have torn her lateral meniscus or have the presence of degenerative changes if it were not for the initial injury, which required ACL reconstruction.

“A reconstructed knee has some abnormality laxity in the knee which allows degeneration and meniscal tears to occur. I feel [that appellant’s] arthroscopy is necessitated, given her previous work injury.”

By decision dated November 23, 2005, the Office found that the medical evidence was insufficient to establish that appellant sustained a knee injury on December 9, 2002. It found that no medical report from that time noted a history of the incident or that the treatment she received on December 10, 2002 was for a condition that resulted from the December 9, 2002 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act⁴ has the burden of proof to establish the essential elements of his 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; that an injury was sustained while 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.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

To determine whether an employee has sustained a traumatic injury in the performance of duty, “fact of injury” must first be established.⁷ 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.⁸ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹

An award of compensation may not be based on surmise, conjecture or speculation or upon the employee’s belief that there is a causal relationship between his or her condition.¹⁰ To

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 5.

⁷ *Neal C. Evins*, 48 ECAB 242 (1996).

⁸ See *Tracey P. Spillane*, 54 ECAB 608 (2003).

⁹ *Id.*

¹⁰ *Manuel Gill*, 52 ECAB 282, 287 (2001).

establish causal relationship, the employee must submit a physician's report in which the physician reviews the factors of employment identified by the employee as causing his condition and taking these factors into consideration, as well as findings upon examination and the employee's medical history, states whether these employment factors caused or aggravated his or her diagnosed condition.¹¹

ANALYSIS

In the instant case, the Board finds that the Office properly treated appellant's claim as a claim for a new injury. Appellant's initial injury of August 8, 1997 was apparently caused when she was attacked by a dog. Her 2002 injury was allegedly caused or aggravated by a new occurrence, slipping on snow while in the performance of her duties as a letter carrier. Therefore, appellant is alleging a new injury, not a recurrence of disability due to the August 8, 1997 injury.¹²

It is not contested that appellant slipped on the snow on December 9, 2002. She was subsequently treated for right knee tendinitis on December 10, 2002. However, the medical evidence does not establish a causal relationship between the incident of December 9, 2002 and appellant's right knee tendinitis or her subsequent treatment and surgery on her right knee in August 2004. The only medical evidence of record that is contemporaneous with the alleged injury is a return to work slip of Dr. Strulson. He treated appellant for tendinitis in the right knee and noted that she would be able to return to work on December 16, 2002. Dr. Strulson provided no opinion as to whether the diagnosis was caused or contributed to by any employment factor. There is no indication that appellant received subsequent treatment from him. Dr. Corcoran mentioned that she slipped on snow in December 2002 and stated: "I do feel [that appellant] likely tore her lateral meniscus, twisting her leg in December 2002." He also stated that appellant would not have torn her lateral meniscus were it not for her initial right knee injury of August 8, 1997. Dr. Corcoran did not explain the basis for attributing the torn lateral meniscus to the December 9, 2002 incident. His opinion on causal relationship was rendered in 2005, over two years following the incident. Dr. Corcoran did not explain what aspect of the diagnostic tests or arthroscopy would support relating the torn lateral meniscus to this incident. His opinion is speculative and is of diminished probative value. On September 7, 2005 Dr. Corcoran indicated that he released appellant from his treatment for the August 8, 1997 injury on November 16, 1998. Appellant did not return to see him until August 2, 2004, at which time she informed Dr. Corcoran of a slip on the snow that occurred over 18 months earlier. There is no explanation given as to why appellant waited so long to get treatment other than Dr. Corcoran's comment that she likely tore her lateral meniscus in December 2002 and attempted to tolerate the symptoms, but that they ultimately increased. There is no record that appellant received any treatment for her right leg from December 10, 2002 until August 2, 2004. The lack of medical treatment during this period was not addressed.

¹¹ *Calvin E. King*, 51 ECAB 394, 401 (2000).

¹² *See supra* note 2.

An award of compensation may not be based on surmise, conjecture or speculation.¹³ Appellant had no treatment on her right knee for over 18 months. Furthermore, no physician submitted a rationalized medical opinion relating her right knee condition to the incident of December 9, 2002. Appellant has not established that she sustained an injury in the course of her federal employment on December 9, 2002. The Office properly denied the claim.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty on December 9, 2002, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 23 and April 12, 2005 are affirmed.

Issued: August 23, 2006
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

¹³ *Manuel Gill, supra* note 10.