

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

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C.S., Appellant )

and )

U.S. POSTAL OFFICE, POST OFFICE, )  
Phoenix, AZ, Employer )

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**Docket No. 06-1121  
Issued: August 22, 2006**

*Appearances:*  
Gordon Reiselt, 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 12, 2006 appellant, through her representative, filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated August 8, 2005 and February 24, 2006 denying her claim for a traumatic injury. 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 established that she sustained a left knee injury on November 24, 2003 in the performance of duty.

## **FACTUAL HISTORY**

On January 5, 2004 appellant, then a 48-year-old secretary, filed a claim for a torn cartilage of the left knee due to an injury occurring on November 24, 2003 in the performance of duty. She stopped work on November 24, 2003. In a statement accompanying her claim, appellant related:

“On November 24, 2003 I went downstairs on my break (*via* the elevator) at approximately 10:20 a.m. I was on my way to the credit union to withdraw funds for a doctor’s appointment I had later that day (11:00 a.m.).

“After I exited the elevator, I started down the hallway to First Credit Union. Just after crossing the rollway to the Postmaster’s Office, I somehow twisted my left knee and had immediate excruciating pain.”

Appellant called her supervisor for help on her mobile telephone. She stated that she was in too much pain to walk and that coworkers pushed her in a chair to her car. The doctor told her that she would be unable to put weight on her leg for two weeks. A specialist reviewed a magnetic resonance imaging (MRI) scan study and diagnosed a torn knee cartilage.

In a statement dated January 7, 2004, Yolanda C. Stenson, appellant’s supervisor, related that she had complained of knee pain prior to her injury and indicated that after she stopped work her physician told her to file a claim. An official with the employing establishment controverted appellant’s claim in an accompanying statement dated January 8, 2004. The official noted that appellant had previously scheduled a doctor’s appointment for her knee on the day of her injury and also was on a break and walking to the credit union at the time of her injury.

In an accident report dated January 7, 2004, Rebecca Logue related that on November 24, 2003 appellant requested permission to go to the doctor for her left knee. She noted that appellant had mentioned that her knee was sore on three previous occasions. Ms. Logue stated:

“Later on November 24, 2003, I received a call from [appellant and] she stated she was on her break at the credit union to get money for her doctor’s appointment for her knee and she felt excruciating pain in the left knee and could [not] put weight on it. I went down immediately and found her leaning against the wall w[ith] her left leg bent back [and] up. I asked if she fell or tripped [and] she said no, ‘I was just walking straight and felt a sharp pain.’”

Ms. Logue indicated that she and a coworker rolled appellant to her car.

By letter dated January 14, 2004, the Office requested additional information from appellant and noted that the current evidence was insufficient to support that her injury occurred in the performance of duty.

In a letter dated February 11, 2004, the employing establishment further challenged appellant’s claim. William Mintun, a coworker, related that on November 24, 2003 appellant seemed in “great discomfort” when walking and that “her walk was hobbled and she grimaced in pain.” Mr. Mintun noted that she purchased and renovated houses to sell outside her

employment. In a statement dated January 16, 2004, Sheryl Kane, a supervisor, indicated that she spoke with appellant about her housing purchases and renovation work and that she occasionally complained of being “tired and stiff from the work she was doing on her house.”

The record contains duty status form reports dated January 14, 2003 and February 4 and 18, 2004 from Dr. Robert A. Mileski, an orthopedic surgeon. He diagnosed a torn medial meniscus and checked “yes” that the condition corresponded to the history provided of appellant twisting her knee walking at work. He found that she was totally disabled from employment. Dr. Mileski released her to resume her regular employment on March 8, 2004.

In a report dated February 11, 2004, Dr. Mileski related that he initially treated appellant on December 5, 2003 for left knee pain. She related that she “sustained a twisting injury while at work and felt increasing pain near the posterior aspect of her knee as well as along the medial joint line.” Dr. Mileski noted that an MRI scan showed a medial meniscus tear for which she “underwent knee arthroscopy and medial meniscectomy on January 8, 2004.” He diagnosed a medial meniscus tear on top of some preexisting knee degenerative joint disease (DJD). He concluded: “Again, the arthroscopic pictures showed a very significant meniscus tear that is highly probable to have occurred in her industrial related twisting injury while at work.”

In a report dated January 23, 2004, Dr. Stuart A. Medoff, Board-certified in family practice, indicated that he treated appellant for acute knee pain on November 24, 2003. He asserted that her “work absence [was] due to the meniscal injury reportedly sustained at work.”

In a statement dated February 9, 2004, appellant related that on December 9, 2004 she told her supervisor that her physician believed “this was an occupational injury due to the twist of my left knee.” Appellant maintained that prior to her injury she experienced discomfort in the back of her left knee and called for a doctor’s appointment on the morning of November 24, 2003. She noted that she walked and rode a bicycle prior to the November 24, 2003 incident. Appellant stated: “I twisted my knee and had immediate excruciating pain in the front of my left knee. I was unable to take a single step or even put an ounce of weight on my left leg due to pain. I had been at work approximately two hours and had walked with full weight on the knee.”

By decision dated February 19, 2004, the Office denied appellant’s claim on the grounds that she failed to establish an injury in the performance of duty. The Office determined that appellant was on a personal errand at the time of her injury.

Dale L. Robinson, Jr., a coworker, indicated that he witnessed appellant “cry out in pain and reach to grab her leg” at around 10:20 a.m. on November 24, 2003. A neighbor of appellant stated that he saw appellant bicycling with her son on the evening of November 23, 2003 and that she “was not having any problems with her knee at that time.”

On March 2, 2004 appellant requested an oral hearing. She submitted a statement by Eve Linton, a coworker, who related that she witnessed appellant walking at work on November 24, 2003 without any obvious discomfort. Ms. Linton further asserted that appellant hired workers for her home renovation. She also related that appellant “was walking for exercise each day in the parking lot” prior to her injury at work. In a statement dated November 5, 2004,

Clifford Lenard, a neighbor, related that appellant walked without problems and rode a bicycle the evening before her November 24, 2003 injury. He also maintained that workmen renovated appellant's homes and that he did not do any house work or yard work. Jennifer Tillman, the credit union branch coordinator, noted that employees used the credit union daily. Christina Skaates and Gina R. Van Arden, employees, indicated that they and other employees used the credit union during the workday.

At the hearing, held on November 16, 2004, appellant, through counsel, noted that she was taking an authorized break on the employing establishment's property at the time of her injury. Appellant related that she was walking when she suddenly felt a pain, she stated that she twisted it but did not really know what had happened except that she felt "excruciating pain."

In an office visit note dated December 5, 2003, Dr. Mileski noted that appellant stated that "she sustained a twisting injury while at work and developed increasing pain near the posterior aspect of her knee as well as along the medial joint line." He diagnosed mild medial knee DJD and a possible medial meniscus tear. In a progress report dated December 29, 2003, Dr. Mileski diagnosed a medial meniscus tear after a twisting injury at work.

By letter dated December 16, 2004, the employing establishment noted that appellant was "unable to specify what caused the injury and had a previously scheduled appointment on that date due to knee pain."

In a decision dated March 7, 2005, the hearing representative affirmed the February 19, 2004 decision as modified to reflect that appellant had not established that an injury occurred at the time, place and in the manner alleged.

On June 10, 2005 appellant, through counsel, requested reconsideration. He argued that the hearing representative gave insufficient weight to the evidence submitted by appellant. In support of reconsideration, appellant submitted a report dated May 4, 2005 from Dr. Mileski, who stated:

"Notably [appellant] presented to my office December 5, 2003 with a chief complaint of left knee pain. She reported a twisting injury to me while at work. It was felt at the time that, since she did have some focal pain on palpation of the hamstring tendons, that more than likely some of her preexisting pain she experienced in the back of her knee prior to her twisting injury at work, was related to some hamstring and bursitis. When she had the sharp, shooting pain [in] the knee at work, it was felt that was a new type of pain and that was pain [that] was attributed to the meniscus tearing."

Dr. Mileski explained that appellant's pain prior to her injury on November 24, 2003 was due to a soft tissue contusion to the posterior hamstring tendons. He stated:

"Again, although the details of the exact work[-]related injury were not known and, as you report, that [she] testified she does not know exactly what she did, again it does not have any definite clinical relevance. Although typically meniscal tears occur in some form of a twisting injury, they can occur without a specific twisting injury."

In a decision dated August 8, 2005, the Office modified its March 7, 2005 decision to find that appellant had established that she walked at work on November 24, 2003 but found that the evidence did not establish “that the claimant twisted her knee or experienced any even other than simply walking, as the claimant has indicated that she does not know exactly what happened on that date and evidence does not support that any other specific exposure occurred.” The Office determined that the medical evidence was insufficient to show that walking at work caused “any specific new knee injury or in any way contributed to a change in the claimant’s preexisting knee condition.”<sup>1</sup>

Appellant, through counsel, requested reconsideration on October 18, 2005. She submitted a report dated September 23, 2005 from Dr. Mileski, who opined that it was “certainly possible” that she sustained a meniscal tear due to just walking, though it was “atypical.” He stated: “Certainly, there is a possibility that some mild twisting occurred that may have made it more likely for [appellant] to sustain a meniscus tear.”

By decision dated February 24, 2006, the Office denied modification of its August 8, 2005 decision. The Office noted that appellant had established that she was in the performance of duty at the time of the alleged injury but had not submitted medical evidence sufficient to show that she sustained an injury due to walking at work.

### **LEGAL PRECEDENT**

The Federal Employees’ Compensation Act<sup>2</sup> provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty. The phrase “sustained while in the performance of duty” is regarded as the equivalent of the coverage formula commonly found in workers’ compensation laws, namely, “arising out of and in the course of employment.”<sup>3</sup>

It is a general rule of workers’ compensation law that, as to employees having fixed hours and places of work, injuries occurring on the premises of the employing establishment, while the employees are going to or from work, before or after hours or at lunch time are compensable.<sup>4</sup> If an employee is on the premises of the employing establishment, an injury will generally fall within the performance of duty.<sup>5</sup> There is a strong presumption that an employee who is injured on the premises of the employing establishment during his or her hours of work is injured while in the performance of duty.

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<sup>1</sup> In its decision, the Office stated that it had accepted fact of injury; however, the Board notes that the Office accepted fact of incident rather than fact of injury.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Mona M. Bates*, 55 ECAB \_\_\_ (Docket No. 03-982, issued October 6, 2003).

<sup>4</sup> *Jimmy Zenny*, 54 ECAB 577 (2003).

<sup>5</sup> *James Gray, Jr.*, 45 ECAB 652 (1993).

An employee seeking benefits under the Act 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; 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.<sup>6</sup> 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.<sup>7</sup>

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.<sup>8</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.<sup>9</sup> An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.<sup>10</sup>

In order to satisfy his burden of proof, an employee must submit a physician’s rationalized medical opinion on the issue of whether the employment incident caused the alleged injury.<sup>11</sup> 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 employee’s alleged injury and the employment incident.<sup>12</sup> The physician’s opinion must be based on a complete factual and medical history of the employee, must be of reasonable certainty and must rationally explain the relationship between the diagnosed injury and the employment incident as alleged by the employee.<sup>13</sup>

### ANALYSIS

The Board notes that appellant was in the performance of duty while walking to the credit union on November 24, 2003. It is a general rule of workers’ compensation law that, as to employees having fixed hours and places of work, injuries occurring on the premises of the employing establishment, while the employees are going to or from work, before or after hours

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<sup>6</sup> *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>8</sup> *Delphyne L. Glover*, 51 ECAB 146 (1999).

<sup>9</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>10</sup> *Id.*

<sup>11</sup> *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

<sup>12</sup> *Gary J. Watling*, *supra* note 9.

<sup>13</sup> *See John W. Montoya*, 54 ECAB 306 (2003); *Shirley R. Haywood*, 48 ECAB 404 (1997).

or at lunch time are compensable.<sup>14</sup> If an employee is on the premises of the employing establishment, an injury will generally fall within the performance of duty.<sup>15</sup>

In this case, appellant alleged that she sustained an injury to her left knee while walking to the credit union, located on the premises of the employing establishment, on an authorized break. There is no factual dispute that her injury took place within the period of her employment. The employing establishment did not contest that appellant was on an authorized break at the time of the incident. Further, it is undisputed that she was on the premises of the employing establishment. While appellant was not engaged in the performance of her assigned duties at the time of her alleged injury, it is well established that work-connected activity goes beyond the direct services performed for the employer and includes at least some ministrations to the personal comfort and human needs of the employee.<sup>16</sup> Appellant submitted statements by coworkers and a manager at the credit union supporting that employees routinely utilized the credit union during the workday and on breaks. Further, there is no evidence appellant violated any employing establishment prohibition by going to the credit union on an authorized break. Thus, the Board finds that this personal convenience was reasonably incidental to her employment.<sup>17</sup>

The Board finds that the November 24, 2003 employment incident occurred at the time, place and in the manner alleged. An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>18</sup> The employing establishment controverted the claim as appellant complained of knee pain prior to her injury and had scheduled an appointment with a doctor to evaluate her knee pain the morning of November 24, 2003. A coworker also submitted a statement that appellant appeared uncomfortable walking on the morning of November 24, 2003. At the hearing, appellant testified that she was unsure of precisely what occurred at the time of her injury. She asserted that she suddenly experienced excruciating pain in the front of her left knee on November 24, 2003, while walking to the credit union such that she was unable to put any further weight on her leg. Appellant immediately called her supervisor for help and sought medical treatment. She submitted a statement from a witness who saw her "cry out in pain and reach to grab her leg" around 10:20 a.m. on November 24, 2003. Appellant additionally submitted a statement from Ms. Linton, a coworker, who asserted that she witnessed appellant walking without discomfort on November 24, 2003 and statements from two neighbors who witnessed her riding a bicycle on the evening of November 23, 2003. The Board finds that, under the circumstances, the evidence does not contain inconsistencies sufficient to cast serious doubt on appellant's version of the employment incident. Consequently, appellant has established the occurrence of the claimed employment incident, walking to the credit union and

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<sup>14</sup> See *Jimmy Zenny*, *supra* note 4.

<sup>15</sup> See *James Gray, Jr.*, *supra* note 5.

<sup>16</sup> *Donna Margretta*, 50 ECAB 220 (1999).

<sup>17</sup> See generally *Ernestine C. Roots*, Docket No. 01-1895 (issued July 24, 2002); *Mona Schorr*, Docket No. 95-2175 (issued March 10, 1998).

<sup>18</sup> *Edward W. Malaniak*, 51 ECAB 279 (2000).

experiencing a sudden onset of pain in the front of her left knee. The issue, therefore, is whether appellant sustained a compensable injury as a result of the incident.

The question of whether an employment incident caused an injury is generally established by medical evidence.<sup>19</sup> In support of her claim, appellant submitted a report dated January 23, 2004 from Dr. Medoff, who noted that he treated her for acute knee pain on November 24, 2003. He found that her “work absence [was] due to the meniscal injury reportedly sustained at work” and noted that she had no previous knee injury.

In duty status reports dated January 14, 2003 and February 4 and 18, 2004, Dr. Mileski diagnosed a torn medial meniscus and checked “yes” that the condition corresponded to the history provided of appellant twisting her knee walking at work. He found that she was totally disabled from employment. In a report dated February 11, 2004, Dr. Mileski related that he initially treated appellant on December 5, 2003 for left knee pain. He stated that she asserted that she “sustained a twisting injury while at work and felt increasing pain near the posterior aspect of her knee as well as along the medial joint line.” Dr. Mileski diagnosed a medial meniscus tear and preexisting DJD and opined that it was “highly probable” that the medial meniscus tear was due to her twisting injury at work.

In a report dated May 4, 2005, Dr. Mileski explained that the knee pain appellant experienced prior to her November 24, 2003 injury was a soft tissue injury of the hamstrings and that the sharp pain she experienced after an injury at work was due to the tearing of the medial meniscus. Dr. Mileski stated:

“Again, although the details of the exact work[-]related injury were not known and, as you report, that [she] testified she does not know exactly what she did, again it does not have any definite clinical relevance. Although typically meniscal tears occur in some form of a twisting injury, they can occur without a specific twisting injury.”

In a report dated September 23, 2005, Dr. Mileski opined that it was “certainly possible” that appellant sustained a meniscal tear just due to walking. He related: “Certainly, there is a possibility that some mild twisting occurred that may have made it more likely for [her] to sustain a meniscus tear.”

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>20</sup> The Board finds that the reports of Dr. Mileski, while insufficiently rationalized to establish by the weight of the reliable, probative and substantial evidence that appellant sustained a meniscus tear due to the November 24, 2003 employment incident, raise an uncontroverted inference of causal relationship sufficient to require further development by the Office.<sup>21</sup> The case will, therefore,

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<sup>19</sup> *John W. Montoya, supra* note 13.

<sup>20</sup> *Phillip L. Barnes*, 55 ECAB \_\_\_\_ (Docket No. 02-1441, issued March 31, 2004).

<sup>21</sup> *Id.*

be remanded for the Office to further develop the medical evidence to determine whether appellant sustained a medial meniscus tear resulting from the November 24, 2003 employment incident and, if so, any periods of disability.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated February 24, 2006 and August 8, 2005 are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: August 22, 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