

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DORA J. BROOKS and U.S. POSTAL SERVICE,  
POST OFFICE, Capitol Heights, Md.

*Docket No. 97-878; Submitted on the Record;  
Issued December 1, 1998*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury to her right knee while in the performance of duty.

On October 11, 1995 appellant, then a 60-year-old distribution clerk, filed a notice of traumatic injury and claim, alleging that on September 15, 1995 she injured her right knee when she hit it against a letter case. Appellant stopped work on October 11, 1995. In a decision dated December 5, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that fact of injury was not established as the medical evidence did not establish that a medical condition resulted from the accepted trauma. By decision dated November 18, 1996, an Office hearing representative affirmed the Office's December 5, 1995 decision.

The Board has carefully reviewed the entire case record on appeal and finds that this case is not in posture for review.

A person who claims benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of her claim, including that she sustained an injury while in the performance of duty and that she had disability as a result.<sup>2</sup> In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of her duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered one in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred.<sup>3</sup> In order to meet her burden of proof to establish the fact that

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Daniel R. Hickman*, 34 ECAB 1220 (1983); see 20 C.F.R. § 10.110(a)

<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 3.803.2a (September 1980).

she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>4</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.<sup>5</sup> The belief of claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.<sup>6</sup>

In the present case, appellant submitted three medical reports by Dr. Eric Dawson, an orthopedist, to substantiate that she sustained an injury to her right knee while in the performance of duty. In a report dated October 12, 1995, Dr. Dawson provided a history of injury on September 15, 1995 and noted appellant's past 1994 collateral ligamentous injury to her right knee. He found that appellant was in distress secondary to her condition and diagnosed possible gouty arthritis. In his October 24, 1995 progress note, Dr. Dawson indicated that appellant has crepitus to tracking in the patella of her knee and some tenderness over the collateral ligaments. In a progress note dated November 21, 1995, Dr. Dawson reported that appellant had a mall trauma incident on September 15, 1995 which led to a gouty response.

While the October 12, 1995 report and November 21, 1995 progress note by Dr. Dawson are not sufficient to establish that appellant's right knee injury is causally related to her accepted trauma of September 15, 1995, the Board finds that these reports are sufficient to require further development of the evidence. It is well established that proceedings under the Act are not adversarial in nature,<sup>7</sup> and while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.<sup>8</sup>

In the present case, there is an uncontroverted inference of causal relationship. On remand, the Office should further develop the evidence by providing Dr. Dawson with a statement of accepted facts and requesting that he submit a rationalized medical opinion on whether appellant's right knee condition is causally related to the accepted incident. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated November 18, 1996 is hereby set aside, and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.

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<sup>4</sup> *John C. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

<sup>5</sup> *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>6</sup> *Manuel Garcia*, 37 ECAB 767 (1986).

<sup>7</sup> See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985); *Michael Gallo*, 29 ECAB 159 (1978).

<sup>8</sup> *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

December 1, 1998

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member