

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROY D. STEWART and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Bowling Green, Ky.

*Docket No. 96-1588; Submitted on the Record;
Issued May 8, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty, as alleged.

The Board has duly reviewed the case record and finds that appellant did not sustain an injury in the performance of duty, as alleged.

An employee seeking benefits under the Federal Employees' Compensation 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 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.¹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or 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. First, 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.³ 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.⁴

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Robert J. Krstyen*, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁴ *Id.*

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 serious doubt on a claimant's statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁵ However, 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.⁶

On December 26, 1995 appellant, then a 33-year-old special agent, filed a claim for a traumatic injury, Form CA-1, alleging that on December 22, 1995 he sprained his right knee and possibly tore his cartilage while exercising on official business pursuant to the Health Improvement Program. Appellant's supervisor stated that he did not witness the injury. By letter dated February 7, 1996, the Office of Workers' Compensation Programs informed appellant that he must submit medical evidence to establish his claim. By letter dated February 7, 1996, the Office also requested information from the employing establishment to corroborate the nature of appellant's activities when he allegedly injured himself. Neither appellant nor the employing establishment responded. By decision dated March 7, 1996, the Office denied appellant's claim stating that he did not submit any medical evidence.

By letter dated March 18, 1996, appellant requested reconsideration of the Office's decision and submitted medical evidence. He stated that he did not miss any work from the alleged December 22, 1995 employment injury but requested payments of two doctors' visits. In a report dated January 2, 1996, Dr. Lynn D. Olson, a Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination and diagnosed possible internal derangement of right knee with tear of medial meniscus and tear of anterior cruciate ligament of left knee status post-medial meniscectomy. He stated that appellant had injuries to the left knee resulting in a complete anterior cruciate ligament tear and open meniscectomy in the medial compartment. In a report dated January 10, 1996, Dr. Olson stated that there was no significant change, that appellant had occasional popping, and that his left and right knee felt about the same and that he had an open meniscectomy on the medial side of the left knee with complete tear of the anterior cruciate ligament.

By decision dated April 17, 1996, the Office denied appellant's reconsideration request.

In the present case, appellant has not met his burden of proof in establishing that his injury occurred as alleged on December 22, 1995 because there is no corroborating evidence in the record. Dr. Olson's only reference to appellant's injury is in his January 2, 1996 report in which he stated appellant noted pain in the right knee while using a leg press machine five days ago. His report does not indicate whether appellant's injury occurred at work. No other evidence in the record indicates where appellant's alleged injury occurred. Although there do

⁵ *Linda S. Christian*, 46 ECAB 598, 600-01 (1995); *Carmen Dickerson*, 36 ECAB 409, 415 (1985).

⁶ *Linda S. Christian*, *supra* note 5 at 601; *Virgil F. Clark*, 40 ECAB 575, 584-86 (1989).

not have to be eyewitnesses to the occurrence of the alleged injury, there must be some supporting evidence.⁷ The record is deficient in this regard. Further, Dr. Olson's diagnosis in his January 2, 1996 report of "possible" internal derangement of the right knee with tear of medial meniscus and tear of anterior cruciate is speculative and therefore is not probative.⁸ Moreover, Dr. Olson does not relate his diagnosis of the right knee as well as his diagnosis of tear of anterior cruciate ligament of the left knee with status post-medial meniscectomy to factors of appellant's federal employment. His January 10, 1996 report also does not address causation. Appellant has therefore failed to establish that he sustained an injury in the performance of duty, as alleged.

The decisions of the Office of Workers' Compensation Programs dated April 17 and March 7, 1996 are hereby affirmed.

Dated, Washington, D.C.
May 8, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁷ *Linda S. Christian, supra* note 5 at 600-01.

⁸ *See Joseph H. Surgener, 42 ECAB 541, 548 (1991).*