

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MAXINE Y. SLATER and U.S. POSTAL SERVICE,  
POST OFFICE, Grand Rapids, Mich.

*Docket No. 96-1712; Submitted on the Record;  
Issued May 8, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a right knee injury in the performance of duty on April 12, 1991.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to meet her burden of proof in establishing her claim due to insufficient factual and medical evidence.

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 timely filed within the applicable time limitation period 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.<sup>1</sup> These are the essential elements of each and every claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>2</sup> In the present case, while there is no dispute that appellant is a federal employee and that she timely filed her claim for compensation benefits, appellant did not meet her burden of proof to establish either the occurrence of the incident on April 12, 1991, or, assuming, *arguendo*, that incident occurred, the existence of an injury resulting from that incident.

Appellant provided as history of her alleged injury that on April 12, 1991, while at work, a broken drawer on a "BCS" machine came out and struck her right leg. Appellant asserted that

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<sup>1</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>2</sup> The Office's regulations clarify that a traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas occupational disease refers to injury produced by employment factors which occur or are present over a period longer than a single workday or shift; *see* 20 C.F.R. §§ 10.5(a)(15)(16).

due to this injury she required surgery in 1994. A witness, Ms. Marlene Croschere, stated that on that date, while she was working near appellant, she observed appellant grimace in pain and knew she had been injured. Ms. Croschere, however, did not actually witness the incident itself, and merely assumed, from appellant's facial expression, that she had been injured. While an injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.<sup>3</sup> A review of the medical evidence of record, however, reveals such inconsistencies in the evidence as to cast serious doubt upon the validity of appellant's claim.

Appellant submitted a number of medical reports both in support of her original claim, and in support of her request for reconsideration.<sup>4</sup> The record contains emergency room records from Butterworth Hospital dated April 12, 1991, which note that appellant presented with right knee pain and gave a history of having dislocated her right knee when she was ten or eleven years old. Appellant reported to the emergency room personnel that she had recently had some pain and swelling in her knee, and that it occasionally felt like it was giving out. X-rays showed no evidence of fracture or dislocation and appellant was provisionally diagnosed with a right knee sprain. The hospital records do not mention a work-related incident. Medical reports dated April 17, 1991 from the employing establishment health unit indicate that appellant presented, at the request of her supervisor, wearing a right knee brace and explained that her knee had popped out of joint, probably while walking up and down the "OCRB," and that she had popped it back into place. She was reported as having further stated that her knee must have popped back out again, and that that was why she went to Butterworth Hospital emergency room. The health unit report further notes that when appellant was asked whether her injury was work related, she replied "no" and explained that she had had the problem of her knee popping in and out of joint since childhood. In a report dated April 22, 1991, a Dr. Schwab noted that appellant "was seen in the ER for pain in her knee which may have come from a twisting episode while at work at the post office. She stated she had problems with what she felt to be a dislocation of her patella at about age 10, although she was never seen for this. She [has] had no significant problems with her knee until the twisting incident at work. It does not sound as if this was a specific injury." Dr. Schwab diagnosed a possible meniscus tear and arranged to follow appellant's care. The physician's report, however, states only that appellant "may" have injured her knee at work, and

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<sup>3</sup> *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

<sup>4</sup> Appellant filed her claim on April 12, 1991, however, the injury report was not filed by the employing establishment until March 9, 1994. In a decision dated October 5, 1994, the Office determined that appellant's claim was timely filed, but denied appellant's claim on the grounds that the medical evidence of record was insufficient to establish that appellant sustained an injury in the performance of duty, as appellant had not submitted any medical evidence earlier than 1994. Appellant requested reconsideration and submitted additional evidence. In a merit decision dated January 1, 1995, the Office determined that the evidence submitted by appellant, which consisted mostly of duplicates of evidence already contained in the record, was insufficient to warrant modification of the prior decision. On May 23, 1995 appellant again requested reconsideration but offered no new arguments and submitted no new evidence. Consequently, in a decision dated June 13, 1995, the Office declined to reopen appellant's claim for a review of the merits. Subsequently, appellant requested reconsideration of the Office's denial of her claim and submitted new medical and factual evidence in support of her request. In a merit decision dated February 7, 1996, the Office determined that the evidence submitted by appellant was insufficient to warrant modification of the prior decision.

the history given, that of a “twisting episode” does not accord with the history of injury given by appellant of having struck her right knee on a metal drawer.<sup>5</sup>

The next relevant medical report is dated July 28, 1993 and consists of an emergency room treatment note stating that appellant presented complaining of right knee pain intermittently for three months, and that her pain was increased by her employment duties. The note added that appellant had presented at Butterworth Hospital approximately two years prior and was treated for a possible patellar dislocation.. Other than noting that appellant’s pain was increased by her employment activities, the report does not relate appellant’s knee condition to her employment.

Finally, the record contains several medical reports from 1994. In reports dated February 1 and 22, 1994, appellant’s treating physician, Dr. Todd M. McLaurin, stated that appellant sustained an injury to her right knee approximately two years prior when she struck her knee on a metal drawer and that she had had problems with her knee giving out since that time. The physician diagnosed a tear of the right anterior horn of the meniscus and recommended surgical intervention. While Dr. McLaurin related appellant’s knee condition to her employment incident two years prior, he did not demonstrate an awareness of appellant’s prior assertion that her knee problems began when she was ten or eleven years old.<sup>6</sup> The record also contains a May 31, 1994 attending physician’s report, Form CA-20, completed by Dr. Thomas A. Malvitz, in which the physician diagnosed a lateral meniscus tear and chronic medial collateral ligament instability in the right knee and indicated that the condition was surgically repaired. Although Dr. Malvitz further indicated by check mark that appellant’s knee condition was related to her employment, he did not provide a rationalized explanation for this opinion.<sup>7</sup>

As the record is fraught with factual inconsistencies regarding the cause of appellant’s knee pain and further does not contain any rationalized medical opinion evidence based on a complete factual and medical background, explaining how appellant’s right knee condition<sup>8</sup> was caused or aggravated by appellant’s employment on April 12, 1991, the Office properly determined that she did not meet her burden of proof to establish that she sustained a right knee injury in the performance of duty on April 12, 1991.

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<sup>5</sup> A physician’s opinion must be based on a complete and accurate factual and medical history. *Gary R. Sieber*, 46 ECAB 215 (1994); *Melvina Jackson*, 38 ECAB 443 (1987); *Naomi A. Lilly*, 10 ECAB 560 (1959). In addition, the Board has held that medical opinions which are speculative or equivocal in character have little probative value; see *William Nimitz, Jr.*, 30 ECAB 567 (1979).

<sup>6</sup> *Gary R. Sieber*, *supra* note 5; *Melvina Jackson*, *supra* note 5; *Naomi A. Lilly*, *supra* note 5.

<sup>7</sup> See *Ruth S. Johnson*, 46 ECAB 237 (1994); *Lillian M. Jones*, 34 ECAB 379, 381 (1981).

<sup>8</sup> *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

The decisions of the Office of Workers' Compensation Programs dated February 7, 1996 and June 13, 1995 are affirmed.

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

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member