

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHARON L. WOLFF and DEPARTMENT OF THE ARMY,  
OFFICE OF THE ADJUTANT GENERAL, Raleigh, N.C.

*Docket No. 96-1781; Submitted on the Record;  
Issued May 11, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty on April 25, 1995.

On April 25, 1995 appellant, then a 35-year-old production controller, filed a notice of traumatic injury and claim for continuation of pay/compensation alleging that on that same date she injured her left knee while running for physical training, which was part of her federal employment. Appellant stopped working on April 28, 1995 for three hours.

Appellant submitted a May 1993 policy letter from the employing establishment establishing that physical training, such as running, was within the scope of its employee's duties.

Appellant submitted a medical report from a physician at the Doctor's Urgent Care Centre dated April 28, 1995, which diagnosed patella femoral pain syndrome. The physician, whose signature was illegible, checked "yes" to indicate that appellant's disability was related to the history of the injury which was given. The history recorded by the physician was that appellant injured her knee while running.

On November 13, 1995 Dr. Stephen H. Kouba, a Board-certified orthopedic surgeon, stated that appellant presented "for an injury to her left knee while she was running on April 25, 1995." He indicated that physical examination revealed severe chondromalacia with grating of the patella femoral joint, a mild joint effusion with tenderness at the anterior lateral joint line. He further stated that x-rays of her knee reveal biocompartmental osteoarthritic degenerative changes associated with a large effusion. Finally, he diagnosed a suspected lateral meniscus tear. Dr. Kourba repeated his diagnosis on an attending physician's report.

On November 14 and 21, 1995 appellant filed notices of recurrence of disability alleging that she suffered a recurrence on November 13, 1995. Appellant indicated that her knee had been hurting since the original injury.

On February 26, 1996 the Office of Workers' Compensation Programs requested additional information, including a physician's rationalized medical opinion addressing the causal relationship between appellant's injury and her employment. It further indicated that it would not address appellant's claims for a recurrence because the original claim was never accepted.

By decision dated April 10, 1996, the Office denied the claim because appellant failed to demonstrate a causal relationship between the injury and the claimed condition or disability. In an accompanying memorandum, the Office accepted that appellant's claim was timely filed, that appellant was a civil employee of the United States, and that the work incident occurred as alleged. The Office further indicated that appellant was advised of the deficiencies of the medical evidence, but that she failed to submit any medical opinion on the relationship of her disorders to the incident which occurred on April 25, 1995.

The Board finds that appellant failed to meet her burden to establish that she sustained an injury in the performance of duty on April 25, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim<sup>2</sup> including the fact that the individual is an "employee of the United States" within the meaning of the Act,<sup>3</sup> that the claim was timely filed within the applicable time limitation period of the Act,<sup>4</sup> 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>5</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To determine whether an 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.<sup>7</sup> Second, the employee must

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>3</sup> See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

<sup>4</sup> 5 U.S.C. § 8122.

<sup>5</sup> See *Melinda C. Epperly*, 45 ECAB 196 (1993).

<sup>6</sup> See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> See *John J. Carlone*, 41 ECAB 354 (1989).

submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>8</sup> An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that his or her disability and/or specific condition for which compensation is claimed are causally related to the injury.<sup>9</sup>

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an “injury.” The term “injury” as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.<sup>10</sup> The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.<sup>11</sup>

In this case, there is no dispute that appellant was an “employee” within the meaning of the Act, nor that appellant timely filed her claim for compensation. Moreover, the Office accepted that the April 25, 1995 work incident occurred as alleged. Appellant, however, has not submitted sufficient medical evidence to establish that she incurred an employment-related injury. Dr. Kouba, a Board-certified orthopedic surgeon, and another physician from the Doctor’s Urgent Care Centre, supplied reports addressing appellant’s knee condition. Nevertheless, none of these reports explained how and why the employment incident caused or aggravated appellant’s knee condition. Consequently, appellant has not submitted rationalized medical evidence, based upon a complete history, explaining how and why her knee condition is employment related. As noted above, the question of whether an employment incident caused a personal injury generally can only be established by medical evidence. Such evidence was requested by the office, but was not submitted by appellant.

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

<sup>9</sup> As used in the Act, the term “disability” means incapacity because of an injury in employment to earn the wages the employee was receiving at the time of injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; see *Frazier V. Nichol*, 37 ECAB 528 (1986).

<sup>10</sup> See *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>11</sup> See *Carlone*, *supra* note 7.

The decision of the Office of Workers' Compensation Programs dated April 10, 1996 is affirmed.

Dated, Washington, D.C.  
May 11, 1998

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member