

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ALBERT D. CHAMRAD and DEPARTMENT OF AGRICULTURE,  
NATIONAL RESOURCES CONSERVATION SERVICE, Bismarck, N.D.

*Docket No. 96-1831; Submitted on the Record;  
Issued May 22, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on September 8, 1995, as alleged.

The Board has duly reviewed the case record in the present appeal and finds that the Office of Workers' Compensation Programs properly determined that appellant failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on September 8, 1995, as alleged.

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, including the fact that the individual is an "employee of the United States" within the meaning of the Act, and that the claim was filed within the applicable time limitations of the Act.<sup>2</sup> An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,<sup>3</sup> that the injury was sustained while in the performance of duty,<sup>4</sup> and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.<sup>5</sup> 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.<sup>6</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>4</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *Steven R. Piper*, 39 ECAB 312 (1987).

<sup>6</sup> *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

There is no dispute that appellant is a federal employee, that he timely filed his claim for compensation benefits, and that the incident occurred as alleged.<sup>7</sup> Appellant, a range conservationist, claimed that on September 8, 1995, while working in rough terrain, he slipped and fell in place twice, once landing on his buttock, and then on his knees and hands, while going up and down a steep slope covered with slippery vegetation. Appellant went on to say that he strained and twisted his right hip and knee and suffered severe pain, possible inflammation, infection, and circulation problem; “final diagnosis pending.” However, the Office found that the evidence was insufficient to establish that an injury resulted from the incident.

The Board finds that appellant has not established that the September 8, 1995 employment incident resulted in an injury. To support the claim, appellant submitted progress notes by Dr. David H. Larsen, an osteopath, covering the period October 11, 1995 through January 3, 1996; an October 30, 1995 report of a limited bone scan performed that day by Dr. William J. Kozel, a Board-certified radiologist; a December 19, 1995 report, by Dr. Larsen; a report of operation dated December 20, 1995 by Dr. Larsen; and a December 20, 1995 pathology report by Dr. Laurie J. Linz, a Board-certified pathologist;

In the progress notes, Dr. Larsen, an osteopath, noted that on October 11, 1995 he saw appellant for complaints of right hip and right knee pain. He also noted that “The pain in the hip is in the anterior aspect of the groin. It has bothered [appellant] for about three weeks, no history of injury.” On examination, Dr. Larsen noted full motion of the hip, and good flexion, and right knee shows a lot of patellar crepitation with motion. He noted x-rays of hip and knee were normal except for a little early mild degenerative arthritis in the knee. Dr. Larsen diagnosed degenerative arthritis, right knee and capsulitis of the right hip, possible labral lesion. On October 30, 1995 he noted that based on a bone scan performed on appellant he may have inflammation, arthritis, infection, or a tumor. On November 9, 1995, Dr. Larsen noted that based on an magnetic imaging resonance (MRI) appellant appears to have avascular necrosis. On January 3, 1996 he noted that based on a pathologist’s report appellant has avascular necrosis. Dr. Larsen’s progress notes failed to include a history of injury, in fact he noted that there was no history of injury. Dr. Larsen also failed to address a causal relationship between appellant’s diagnosed condition and the September 8, 1995 employment-related incident. Therefore, Dr. Larsen’s progress notes are insufficient to establish appellant’s claim.

In an October 30, 1995 report of a limited bone scan performed that day, Dr. Kozel, a Board-certified radiologist, reported his findings of “slightly increased activity seen in the region of the hip on the initial images. Delayed images also show a definite increase in activity in the region of the superior aspect of the right femoral head. Knees appear essentially normal. Dr. Kozel’s impression, “increased activity in the region of the right femoral head. Questionably related to tumor, fracture, or inflammatory process. Dr. Kozel also failed to provide a history of injury, or to address a causal relationship between appellant’s diagnosed condition and the September 8, 1995 employment-related incident. Dr. Kozel’s October 30, 1995 report is also insufficient to establish appellant’s claim.

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<sup>7</sup> Accompanying appellant’s claim form was a November 11, 1995 statement by a witness who saw the incident as described by appellant.

In a December 19, 1995 report, Dr. Larsen stated that appellant was coming to St. Alexius Medical Center for core reaming and biopsy of right hip. He went on to say, "This patient has a history of right hip pain. The pain is in the anterior aspect of the groin. It has bothered him now for several months. There is no history of injury." Dr. Larsen's clinical impression was avascular necrosis, right femoral head. In a December 20, 1995 report of operation, Dr. Larsen described the procedure of core reaming and biopsy of right femoral head and neck which was performed that day on appellant and reported the findings of good solid bone and no gross pathology at the time of the biopsy. Neither Dr. Larsen's December 19, nor his December 20, 1995 report included a history of injury nor did they address a causal relationship between appellant's diagnosed condition and the September 8, 1995 employment-related incident. Therefore, the December 19 and 20, 1995 reports are insufficient to establish appellant's claim.

In a December 20, 1995 pathology report Dr. Linz, stated, "The sections of the right femoral head and neck biopsy show fat necrosis. This is a nonspecific, although abnormal finding. In view of this nonspecific finding, the differential diagnosis includes avascular necrosis and transient osteoporosis (bone marrow edema syndrome). Clinical-radiographic-pathologic correlation is required to differentiate these entities in view of the nonspecific findings seen on the bone marrow biopsy. There is no evidence of malignancy." As with Drs. Larsen, and Kozel, Dr. Linz failed to provide a history of injury or to address a causal relationship between appellant's diagnosed condition and the September 8, 1995 employment-related incident. Therefore, Dr. Linz's December 20, 1995 report is insufficient to establish appellant's claim.

In summary, there is no rationalized medical opinion evidence supporting a causal relationship between appellant's employment and his diagnosed condition of avascular necrosis. None of the reports or progress notes provided a history of injury, nor did they address whether appellant's claimed condition was causally related to the September 8, 1995 employment-related incident. In fact, none of the evidence mentioned an incident on that date. Dr. Larsen in a progress note of October 11, 1995 and a December 19, 1995 report, specifically stated that there is no history of injury. By letters dated December 11 and 18, 1995, the Office advised appellant of the type of evidence needed to establish his claim, but such evidence has not been submitted. Therefore, the Board finds that the evidence of record is insufficient to meet appellant's burden of proof.

The decision of the Office of Workers' Compensation Programs dated March 26, 1996 is affirmed.

Dated, Washington, D.C.  
May 22, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member