

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY C. GARCIA and U.S. POSTAL SERVICE,
POST OFFICE, Beckley, W.Va.

*Docket No. 97-1086; Submitted on the Record;
Issued November 13, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

On June 25, 1996 appellant, then a 50-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained an injury to his right knee as a result of his employment. Appellant explained that he first became aware of his illness on December 1, 1995, and that he believed it was the result of falling down and hitting his knee on many occasions during the 12½ years he had been walking his route.

In further support of his claim, appellant submitted an undated, handwritten note on a physician's prescription pad indicating that on June 13, 1996 appellant had undergone arthroscopic surgery of his right knee.¹ The note further indicated that appellant should be excused from work until June 25, 1996. Additionally, appellant submitted a "sick certificate" from the Department of Orthopedic Surgery, University of Virginia Medical Center, requesting that appellant be excused from work until July 25, 1996.

By letter dated August 7, 1996, the Office of Workers' Compensation Programs advised appellant that the information previously submitted was insufficient to render a determination of whether he was eligible for benefits. The Office further advised appellant of the type of factual and medical evidence necessary to establish his eligibility, and requested that he submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion specifically addressing the factors or incidents in his federal employment that contributed to his claimed condition. Appellant responded by letter dated August 29, 1996, and indicated that his physician would forward the necessary information.

On August 20, 1996 appellant's physician, Dr. Frank C. McCue, a Board-certified orthopedic surgeon, forwarded treatment notes covering the period of May 1 through

¹ The physician's signature is illegible.

July 24, 1996.² Dr. McCue also forwarded three “sick certificate[s]” dated May 1, June 25 and July 24, 1996, a laboratory report dated June 13, 1996, a consultation request for physical therapy, and a July 23, 1996 letter from appellant’s physical therapist advising Dr. McCue of appellant’s progress. However, Dr. McCue did not provide a narrative report specifically addressing the factors or incidents in appellant’s federal employment that contributed to his torn medial meniscus of the right knee.

By decision dated October 7, 1996, the Office denied appellant’s claim on the basis that the evidence failed to establish that the claimed disability was causally related to his employment. In an accompanying memorandum, the Office noted that, while appellant was previously advised of the need for a comprehensive medical report from a physician discussing the relationship of his knee condition to the factors of his employment, none of the medical evidence submitted provided an indication that the current right knee condition was a result of factors of his employment.

By letter postmarked November 23, 1996, appellant requested an oral hearing before the Office. However, prior to receiving a response to his request for a hearing, appellant filed an appeal with the Board on February 3, 1997. Appellant’s request for a hearing was subsequently denied by the Office as untimely on February 27, 1997.³

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees’ Compensation Act⁴ 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 under the Act, that an injury was sustained in the performance of duty, and that any disability or specific condition for which compensation is being claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation

² The treatment notes dated May 1, 1996 identify appellant’s occupation as a letter carrier, and further note that appellant had “gradual onset of [right] knee pain two to three [years] ago.”

³ Initially, the Board finds that the Office did not have the authority to issue its February 27, 1997 decision denying appellant’s request for a hearing. The Board and the Office may not simultaneously exercise jurisdiction over the same issue in a case. *Arlonia B. Taylor*, 44 ECAB 591 (1993). In order for the Office to determine whether to grant an untimely request for a hearing, the Office must review its October 7, 1996 decision. At the time the Office issued its denial of appellant’s request for a hearing, appellant had already filed an appeal with the Board regarding the Office’s October 7, 1996 decision. Inasmuch as the Board had obtained jurisdiction over the case on February 3, 1997, prior to the issuance of the February 27, 1997 decision denying appellant’s request for a hearing, the Office lacked the authority to issue said decision. Accordingly, the Office’s February 27, 1997 decision is null and void.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

In an occupational disease claim, in order to establish that an injury was sustained in the performance of duty, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by appellant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish a causal relationship.⁸ Causal relationship must be established by rationalized medical opinion evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The physician's opinion must be based on a complete factual and medical background of the claimant, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the claimant's specific employment factors.⁹ In the instant case, appellant failed to submit such evidence, and the Office, therefore, properly denied the claim for compensation.

While the record includes evidence that appellant was diagnosed with a torn medial meniscus of the right knee, which required arthroscopic surgery to repair, the record is devoid of any medical evidence attributing this injury to appellant's employment as a city letter carrier. As previously noted, the Office advised appellant of the need for additional factual and medical evidence specifically addressing the factors or incidents in his federal employment that contributed to his claimed condition. Although appellant submitted additional factual and medical evidence, as the Office correctly noted, "none of the medical evidence submitted provided an indication that appellant's current right knee condition was as a result of factors of his employment." For example, appellant did not submit a physician's report explaining how specific employment factors would cause or aggravate a particular condition. Accordingly, the Office properly denied appellant's claim for compensation.

The October 7, 1996 decision of the Office of Workers' Compensation Programs denying appellant compensation and medical benefits is affirmed.

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

Dated, Washington, D.C.
November 13, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member