

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAY B. SMITH and DEPARTMENT OF JUSTICE,
FEDERAL PRISONS SYSTEMS, U.S. PENITENTIARY,
Leavenworth, Kans.

*Docket No. 96-2661; Submitted on the Record;
Issued September 4, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a right lower extremity injury on January 3, 1996 in the performance of duty, causally related to factors of his federal employment.

On January 3, 1996 appellant, then a 36-year-old correctional officer, filed a claim alleging that he stepped down on fire escape stairs that date and turned his right knee. Appellant described the alleged injury as "right knee inside leg muscles from knee to right foot sore." Appellant did not stop work, and did not promptly seek medical attention.

By letter dated May 28, 1996, the Office of Workers' Compensation Programs advised appellant that the information submitted was insufficient to adjudicate his case, and it requested that he submit further information including a detailed description of how the injury occurred, whether or not he fell and if so how, the names of witnesses, the immediate effects of the injury and his subsequent actions, an explanation of why he delayed seeking medical attention, a description of his condition between the time of injury and the date he first received medical care, a description of prior or similar injuries, and a medical report including a detailed history of injury and work factors involved, results of objective medical testing, and a rationalized opinion addressing causal relation.

In response appellant submitted two medical progress notes dated May 21 and 24, 1996. The May 21, 1996 note stated in pertinent part: "Status post-twisting injury to the right knee, sustained in January 1996. Heard a popping sensation, subsequent onset of discomfort. Aggravated with prolonged walking. Has had episodes of giving way/popping of knee...." The May 24, 1996 note stated: "MRI [magnetic resonance imaging] did not reveal any evidence of meniscal tear. Showed some mixoid degeneration of the medial meniscus with some fluid in the joint space." Neither note related the unspecified knee condition to factors of appellant's federal employment.

By decision dated July 22, 1996, the Office rejected appellant's claim finding that the evidence of record failed to establish that an injury was sustained as alleged. The Office found that, although the medical evidence submitted stated that appellant twisted his right knee in January 1996, it did not relate this injury to factors of his federal employment, and that appellant did not explain why he waited five months after the alleged injury to seek medical treatment, and it noted that no specific right lower extremity injury related to appellant's employment had been identified.

The Board finds that appellant has failed to establish that he sustained a right lower extremity injury on January 3, 1996 in the performance of duty, causally related to factors of his federal employment.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must be determined whether "fact of injury" has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Secondly, the employee must submit evidence in the form of medical evidence, to establish that the employment incident caused a personal injury.¹

The Board notes that appellant has failed to submit medical evidence sufficient to establish that the identified employment incident caused a personal injury.

Following the alleged employment incident, appellant continued to work without documented problems for five months before he sought medical treatment. He did not explain his ability to continue to work without documented problems if he had sustained a personal injury as alleged. Further, the medical evidence submitted did not identify a specific condition or injury, based upon objective findings, related to the alleged employment incident of January 3, 1996. The May 21, 1996 medical progress note merely stated that appellant twisted his knee sometime in January 1996; it did not relate this twisting to the specific employment incident alleged, and it did not identify an objective condition or personal injury that occurred as a result. Consequently, this medical progress note is insufficient to establish appellant's claim.

Further, the May 24, 1996 medical progress note identified only some mixed degeneration of the medial meniscus, which it did not relate to the traumatic January 3, 1996 employment incident. This note did not identify any objective injury as a result of trauma, and it did not discuss causal relationship at all. Consequently, this medical progress note is not sufficient to establish appellant's claim. As nothing further was submitted in support of appellant's claim, he has failed to meet his burden of proof.

¹ *Geraldine Sutton*, 46 ECAB 1026 (1995); *Gene A. McCracken*, 46 ECAB 593 (1995).

Consequently, the decision of the Office of Workers' Compensation Programs dated July 22, 1996 is hereby affirmed.

Dated, Washington, D.C.
September 4, 1998

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member