

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT L. LUDWICK and U.S. POSTAL SERVICE,
MILLARD POST OFFICE, Omaha, NE

*Docket No. 97-472; Submitted on the Record;
Issued July 22, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty on September 5, 1995 causally related to factors of his federal employment.

On September 5, 1995 appellant, then a 40-year-old rural letter carrier, filed a claim for compensation benefits alleging that he sustained an injury to his left knee on that date when he "turned" at his carrier case/cage. He alleged that he felt pain accompanied by a loud popping noise. Supervisor J.P. Ladd signed the claim form as a witness and indicated that he did not see or hear anything unusual when appellant turned to speak to him. On the reverse of the claim form, a supervisor, Jerry Keller, related that appellant was seen limping on the left leg one week prior to the alleged injury. In an accompanying written statement, appellant related that on September 5, 1995 Mr. Ladd had approached him from behind, asked him a question and, as appellant turned to face him, appellant heard a loud crack and suddenly felt a sharp pain in his left knee.

In a form report dated September 5, 1995, a physician related that as appellant "turned around to face the accountables clerk he heard a loud crack." He diagnosed a possible left knee sprain.

In a report dated September 12, 1995, Dr. Lynn A. Crosby, a Board-certified orthopedic surgeon of professorial rank, related that appellant twisted his left knee at work, felt immediate pain and was unable to walk. He diagnosed a possible medial meniscus tear of the left knee.

In a report dated September 18, 1995, Dr. Crosby related that appellant had to use crutches because of pain and had "catching and popping" in his knee joint. He diagnosed a medial meniscus tear.

A magnetic resonance imaging (MRI) scan report dated September 22, 1995 noted some irregularity in the posterior horn of the lateral meniscus and indicated that the condition was probably degenerative but could be post traumatic.

In a written statement dated October 3, 1995, appellant stated that on September 5, 1995 he was writing in a change of address book and was standing on a rubber mat when Mr. Ladd approached him from behind on his left side and asked him a question. He stated that he had his knees bent so that he could write in the book and turned to his left with a quick jerk as he straightened out his legs, pivoting on the left knee. He stated that he felt a sharp pain in his left knee and there was a loud crack and he asked Mr. Ladd "Did you hear that?" Appellant stated that Mr. Ladd replied "What was that?" and appellant answered that it was his knee.

In a memorandum of a telephone conference dated October 4, 1995, an Office of Workers' Compensation Programs senior claims examiner related that appellant stated that on September 5, 1995 he was writing in a change of address book when he was approached by Supervisor Ladd and that Mr. Ladd startled him when he spoke as he approached. He related that appellant turned his upper body to face towards the supervisor and heard a pop in his left knee and felt pain. The claims examiner noted that appellant indicated that he had asked Mr. Ladd if he had heard the pop and Mr. Ladd indicated that he did. The claims examiner noted that he had asked appellant how he was physically positioned when the injury occurred and appellant explained that his feet were fixed and that he was somewhat bent over and when he turned to face the supervisor his feet remained stationary and his upper body twisted to face the supervisor. He related appellant's statement that he was limping prior to September 5, 1995 due to a toe injury and that a toenail that had been removed in late 1994, was beginning to grow back and he had recently stubbed the toe and had been feeling pain as a result.

By decision dated October 20, 1995, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that he sustained an injury in the performance of duty on September 5, 1995 as alleged.

By letter dated November 9, 1995, appellant requested reconsideration of the denial of his claim.

In a statement dated October 23, 1995, Mr. Ladd stated that on September 5, 1995 when he approached appellant, appellant turned at the waist and head to answer a question posed to him. He stated that he did not remember appellant moving his feet or hearing any pop or crack coming from appellant's knee.

In a narrative report dated November 20, 1995, Dr. Crosby stated that he first saw appellant on September 11, 1995 for a twisting type of injury. He stated that at that time he felt that appellant had a meniscus tear. Dr. Crosby stated that x-rays revealed some mild degenerative changes but were otherwise normal. He stated that when appellant returned for a repeat examination he had improved but could not perform any work in a standing position. Dr. Crosby stated that appellant had torn cartilage in his knee and that his injury condition was work related. He stated that when he first examined appellant he had an acutely swollen knee, which corresponded to a recent injury and he was not aware of any preexisting left knee condition.

By decision dated January 29, 1996, the Office denied modification of its October 20, 1995 decision.

By letter dated May 3, 1996, appellant, through his representative, requested reconsideration of the denial of his claim and submitted additional evidence. He stated that he was limping prior to the claimed employment injury because he had undergone surgical removal of an infected ingrown toenail in November 1994 and the toenail was slowly growing back. He indicated that he occasionally limped because of the toenail condition.

In an operative report dated March 7, 1996, Dr. Crosby related that appellant underwent arthroscopic surgery for a lateral meniscus tear of the left knee.

In a report dated March 27, 1996, Dr. Crosby stated that appellant described an injury to his knee that was consistent with the arthroscopic findings of a lateral meniscus tear and that he supported appellant's claim that he sustained a work-related injury to his left knee.

In a report dated April 12, 1996, Dr. Ziad L. Zawaideh, a Board-certified family practitioner, stated that he treated appellant in November 1990 for an infected ingrown toenail on the left foot, that appellant had undergone removal of the toenail in 1994 and that since that time he had experienced difficulty walking.

In a report dated April 15, 1996, Dr. Crosby stated that he felt, within a reasonable amount of medical certainty, that appellant was "injured on the job from a twisting-type injury which he provided in the history [of the condition]."

By decision dated August 6, 1996, the Office denied modification of its January 29, 1996 decision.

The Board finds that this case is not in posture for a decision.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim.² When a claim for compensation is based on a traumatic injury, the employee must establish the fact of injury by proof of an accident or fortuitous event having relative definiteness with respect to time, place and circumstances and having occurred in the performance of duty and by proof that such accident or fortuitous event caused an "injury" as defined in the Act and its regulations.³

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of

¹ 5 U.S.C. §§ 8101-8193.

² See *Margaret A. Donnelley*, 15 ECAB 40 (1963).

³ See *Loretta Phillips*, 33 ECAB 1168, 1170 (1982). For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

injury and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on a claimant's statements. The employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁴ However, an employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁵

In his September 5, 1995 claim form, appellant alleged that he sustained an injury to his left knee when he turned to speak to Mr. Ladd, a supervisor, and heard a loud crack and felt pain in his knee. The employing establishment questioned appellant's claim and noted that appellant was seen limping on his left leg prior to the claimed employment injury. However, appellant explained that he was limping prior to the claimed September 5, 1995 incident, because he had recently stubbed a toe, which was growing in following surgical removal of an infected ingrown toenail in 1994. Appellant submitted an April 12, 1996 report from Dr. Zawaideh, a Board-certified internist, who stated that appellant still had an inflamed toenail when he was seen on that date.

In a written statement dated October 3, 1995, appellant stated that on September 5, 1995 he was writing in a change of address book and was standing on a rubber mat when Mr. Ladd approached him from behind on his left side and asked him a question. He stated that he had his knees bent so that he could write in the book and turned to his left with a quick jerk as he straightened out his legs, pivoting on the left knee. He stated that he felt a sharp pain in his left knee and there was a loud crack and he asked Mr. Ladd "Did you hear that?" Appellant stated that Mr. Ladd replied "What was that?" and appellant answered that it was his knee.

In a form report dated September 5, 1995, a physician related that as appellant "turned around to face the accountables clerk he heard a loud crack." He diagnosed a possible left knee sprain.

An MRI scan report dated September 22, 1995 noted some irregularity in the posterior horn of the lateral meniscus and indicated that the condition could be post traumatic.

In a narrative report dated November 20, 1995, Dr. Crosby, appellant's attending Board-certified orthopedic surgeon of professorial rank, stated that he first saw appellant on September 11, 1995 for a twisting type of injury and he felt that appellant had a meniscus tear. He stated that appellant had torn cartilage in his knee and that his injury condition was work related. Dr. Crosby stated that when he first examined appellant he had an acutely swollen knee, which corresponded to a recent injury and he was not aware of any preexisting left knee condition.

In a report dated March 27, 1996, Dr. Crosby stated that appellant described an injury to his knee that was consistent with the arthroscopic findings of a lateral meniscus tear and that he supported appellant's claim that he sustained a work-related injury to his left knee.

⁴ *Carmen Dickerson*, 36 ECAB 409, 415 (1985).

⁵ *Robert A. Gregory*, 40 ECAB 478, 483 (1989).

In a report dated April 15, 1996, Dr. Crosby stated that he felt, within a reasonable amount of medical certainty, that appellant was “injured on the job from a twisting-type injury which he provided in the history [of the condition].”

The Board notes that, while none of the reports of appellant’s attending physicians are completely rationalized, they are consistent in indicating that appellant sustained an employment-related injury on September 5, 1995 and are not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports are not entirely sufficient to meet appellant’s burden of proof to establish his claim, they raise an uncontroverted inference between appellant’s claimed condition and the employment incident of September 5, 1995 and are sufficient to require the Office to further develop the medical evidence and the case record.⁶

Accordingly, the case must be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained an employment-related injury on September 5, 1995. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The August 6 and January 29, 1996 decisions of the Office of Workers’ Compensation Programs are set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
July 22, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁶ See Robert A. Redmond, 40 ECAB 796, 801 (1989).