

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANITA F. BRYANT and COMMODITY FUTURES TRADING
COMMISSION, CFTC, Los Angeles, CA

*Docket No. 98-1076; Submitted on the Record;
Issued November 5, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant established that she sustained an injury in the performance of duty on August 28, 1997.

On September 4, 1997 appellant, then a 36-year-old legal technician, filed a notice of traumatic injury and claim for compensation alleging that on August 28, 1997, while putting away office supplies, she pushed a box of paper with her left foot and her knee “popped.”

In a treatment note dated September 4, 1997, Dr. Charles Hsu, a Board-certified family practitioner, reported that appellant complained of intermittent left knee pain for two months. Dr. Hsu noted that appellant bumped her knee on a desk drawer a month ago. He diagnosed probable patella tendinitis, wrapped appellant’s knee and prescribed medication.

In a treatment note dated September 9, 1997, Dr. John R. Sharpe, Jr., a Board-certified family practitioner, noted that appellant was seen a week ago for left patella tendinitis. According to Dr. Sharpe, appellant’s initial injury occurred when she was at work pushing a box of boxes and heard her knee “pop.” He stated that he had discussed with appellant the possibility that she had a mild meniscal tear.¹

In an October 3, 1997 report, Dr. Hsu listed the date of injury as August 28, 1997. He advised that he had treated appellant for intermittent left knee pain for two months. Dr. Hsu noted that appellant was having trouble standing because her knee would give out and that her knee got stiff after sitting for long periods of time. He further related that appellant “bumped [her knee] on a desk drawer one month ago.” Dr. Hsu diagnosed probable patellar tendinitis, wrapped appellant’s knee and advised her to return in one month.

¹ Dr. Sharpe also prepared a report on October 6, 1997 in which he listed the date of injury as August 28, 1997 and diagnosed left patellofemoral syndrome, left patella tendinitis with probable meniscal tear.

In reports dated October 3 and 20, 1997, Dr. George Hanna, a Board-certified physician in occupational medicine, listed the date of injury as August 28, 1997. Dr. Hanna diagnosed left patellofemoral syndrome for which he prescribed physical therapy. He indicated that appellant was released to work on September 26, 1997 with no restrictions.

In an October 20, 1997 report, Dr. Lauri B. Hemsley, a Board-certified physician in occupational medicine, noted that on August 28, 1997, appellant injured her left leg while pushing a large heavy box with her foot at work. Dr. Hemsley diagnosed left patellofemoral syndrome and left patella tendinitis with probable mild meniscus tear.

In an October 30, 1997 report, Dr. Hemsley advised that appellant continued to complain of intermittent left knee pain. She diagnosed left patellofemoral syndrome with tendinitis and probable mild meniscal tear. Dr. Hemsley also noted that appellant was scheduled for an MRI on November 14, 1997.

By letter dated November 6, 1997, the Office requested that appellant submit medical evidence addressing whether the August 28, 1997 work incident caused an injury or precipitated symptoms of a preexisting knee condition.

In a decision dated January 9, 1998, the Office denied appellant's claim for compensation on the grounds that she failed to establish fact of injury.

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on August 28, 1997.²

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 within the applicable time limitation of the Act, 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.⁴ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether a "fact of injury" has been established. There are two components involved in establishing fact of injury which must be considered. First, the employee must submit sufficient evidence to establish that he actually

² Appellant submitted additional evidence subsequent to the Office's January 9, 1998 decision. The Board, however, does not have jurisdiction to review evidence that was not before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton* 40 ECAB 1143 (1989).

⁵ *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused personal injury.⁷ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.

An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.⁸ To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified by appellant as causing his injury and, taking these into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his opinion.⁹

In the instant case, appellant alleged that she felt a "pop" in her left knee on August 28, 1997 while moving a large box with her foot. The Office determined that appellant failed to establish fact of injury because the medical records from Dr. Hsu indicated that appellant complained of intermittent left knee pain prior to the date of the alleged injury. The Office further noted that at the time of his September 4, 1997 examination, Dr. Hsu reported only that appellant bumped her left knee "one month ago" on a drawer at work and did not discuss the August 28, 1997 work incident. Contrary to the Office's determination, however, contemporaneous medical reports from Drs. Sharpe and Hemsley included a description of the August 28, 1997 work incident and listed the date of injury as August 28, 1997. Moreover, the fact that appellant may have hit her knee on her desk drawer at work as described by Dr. Hsu, this does not refute appellant's allegation that she felt her left knee "pop" while moving a box with her foot at work on August 28, 1997. Thus, the Board finds that appellant's statement on her CA-1 form¹⁰ and the reports of Drs. Sharpe and Hemsley are sufficient and reliable evidence from which to conclude that an incident occurred at the time, place and in the manner alleged by appellant on August 28, 1997.

Notwithstanding, the Board agrees with the Office that the medical evidence of record is insufficient to establish that the employment incident on August 28, 1997 caused an injury or that appellant was disabled as a result of the August 28, 1997 employment incident. As noted by the Office, Dr. Hsu reported that appellant complained of intermittent left knee pain prior to August 28, 1997. The record also contains differing diagnoses of appellant's condition including tendinitis, questionable meniscus tear, and left patellofemoral syndrome. Furthermore, none of the physicians of record discuss how the August 28, 1997 employment incident resulted in an injury nor do they provide any rationalized explanation as to how appellant sustained a knee

⁶ *Elaine Pendleton, supra* note 4.

⁷ *Id.*

⁸ *See Victor J. Woodhams, supra* note 5.

⁹ *Id.*

¹⁰ An employee's statement alleging that an incident occurred at a specific time, place and in a given manner will stand unless refuted by strong or persuasive evidence; *see Constance G. Patterson, 21 ECAB 206 (1989).*

condition by moving a box at work with her foot on August 28, 1997. While appellant may have experienced symptoms of her knee “popping” on August 28, 1997, there is no rationalized medical opinion evidence to establish that the August 28, 1997 work event of moving a box with her foot resulted in an injury causally related to her disability. The Board, therefore, concludes that the Office properly denied appellant’s claim for compensation as she failed to discharge her burden of proof in establishing fact of injury.

The decision of the Office of Workers’ Compensation Programs dated January 9, 1998 is hereby affirmed as modified.

Dated, Washington, D.C.
November 5, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member