

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES D. KNOPF and U.S. POSTAL SERVICE,
POST OFFICE, Eagan, MN

*Docket No. 98-1096; Submitted on the Record;
Issued October 5, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained a knee injury in the performance of duty on March 4, 1997.

The Board has duly reviewed the case on appeal and finds that appellant has not met his burden of proof.

Appellant, a letter carrier, filed a claim on March 19, 1997 alleging that on March 4, 1997 he slipped on ice in the performance of duty and injured his left knee. The Office of Workers' Compensation Programs denied appellant's claim, by decision dated August 12, 1997, finding that appellant failed to establish that the employing incident occurred as alleged. Appellant requested reconsideration and, by decision dated December 4, 1997, the Office denied modification of its August 12, 1997 decision.

An employee seeking benefits under the Federal Employees' Compensation Act 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 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."¹ 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.²

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

established. Generally, fact of injury consists of two components which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.³ In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.⁴ An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁵ A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.⁶

In this case, appellant reported on his claim form that he slipped on ice on March 4, 1997 injuring his left knee. In a narrative statement, appellant stated that he had previous knee swellings, but that the final injury was caused by slipping on icy streets. Appellant's supervisor, Paul A. Young, completed the reverse of appellant's claim form and stated that appellant did not report his injury until March 21, 1997. He stated, "[h]e had stated that his knee was sore but did not state he had slipped on [March 4, 1997], that it may be military related."

Appellant submitted a second narrative statement on September 9, 1997 and stated that he fell in January 1997 and used sick leave for this injury. He stated that he fell again on March 4, 1997. Mr. Young submitted a second statement asserting that he was not informed of appellant's fall until March 21, 1997 and that he thought appellant's knee condition was due to his war injuries.

Appellant submitted a medical report dated April 14, 1997 listing appellant's date-of-injury as March 4, 1997 and indicating with a check mark "yes" that appellant's diagnosed left knee condition and resulting patellectomy were causally related to his employment. However, the physician, whose signature is illegible, also stated that appellant had a two-month history of increasing knee pain.

In hospital reports dated March 19 through March 30, 1997, physicians indicated that appellant had previously injured his left knee in 1970 in Vietnam, that he had undergone surgery on his left knee in 1994, and that his knee pain had increased over several months. A physician noted on March 19, 1997 that appellant denied any specific history of trauma or fall. On March 29, 1997 a physician noted that appellant fell at work in December 1996.

Due to the conflicting histories of injury provided to appellant's physicians and to the employing establishment, the Board finds that appellant has not establish that he sustained the

³ *Elaine Pendleton, supra* note 1.

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁶ *Id.* at 255-56.

injury as alleged. Most of the medical evidence indicates that appellant had increasing knee pain two months prior to March 1997 and does not mention any fall or trauma. Even the form report indicating that appellant's condition was due to his employment and providing a date of injury, indicates that appellant's symptoms predated March 4, 1997. The only report mentioning a traumatic injury at work places the date in December 1996 rather than March 1997. As appellant has not provided consistent histories of injury, he has failed to establish that his injury occurred as alleged.

The decisions of the Office of Workers' Compensation Programs dated December 4 and August 12, 1997 are hereby affirmed.

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

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member