

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CECILIA G. PACHECO and U.S. POSTAL SERVICE,  
POST OFFICE, Oakland, CA

*Docket No. 97-520; Submitted on the Record;  
Issued August 28, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a left knee injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for review of the merits.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet her burden of proof in establishing that she sustained a left knee injury in the performance of duty.

Appellant, a letter carrier, filed a claim on February 2, 1995 alleging that on January 28, 1995 a coworker bumped into her striking her left shoulder and left knee. Appellant indicated that she sustained injury to her left knee and a headache due to this incident. The Office denied appellant's claim by decision dated March 28, 1995. The Office accepted that the incident occurred as alleged; however, the Office found that the medical evidence was insufficient to establish that appellant sustained either a left knee injury or an aggravation of her sinusitis headache. Appellant requested an oral hearing on April 11, 1995. By decision dated April 24, 1996, the hearing representative denied appellant's claim finding that the medical evidence was not sufficient to meet her burden of proof in establishing a causal relationship between her knee condition and the accepted employment incident. Appellant requested reconsideration on July 26, 1996. By decision dated August 8, 1996, the Office declined to reopen appellant's claim for review of the merits finding that she failed to submit relevant new evidence.

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 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.<sup>1</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>2</sup> Rationalized medical opinion evidence is medical 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 opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>3</sup>

In this case, the Office accepted that the employment incident occurred as alleged. However, the Office found that appellant failed to submit the necessary medical opinion evidence to establish a causal relationship between her diagnosed conditions and her accepted employment incident.

In support of her claim, appellant submitted a report dated January 28, 1995 from Dr. D. Lively, a Board-certified internist. In this report, Dr. Lively noted appellant's history of injury and stated that she had no bruising or ecchymosis and, therefore, no apparent knee or shoulder injury. He noted that appellant had experienced headaches over the past several weeks and diagnosed chronic sinus headaches. Dr. Lively diagnosed sinusitis headache with a slight aggravation due to the employment incident. Appellant also submitted Dr. Lively's January 28, 1995 treatment note. In this note, he indicated that appellant complained of a headache, shoulder and knee pain. Dr. Lively indicated that appellant's left knee had full range of motion. He diagnosed sinusitis with headache and no evidence of knee or shoulder injury.

These reports do not support appellant's claim for a left knee injury. Dr. Lively noted that appellant complained of pain but found normal range of motion and no evidence of injury, in regard to appellant's sinusitis and resulting headache, in his January 28, 1995 report. He stated that there was a "slight aggravation" due to the employment incident, but failed to offer any medical explanation of how or why the aggravation occurred. Therefore, these reports are not sufficient to establish either a left knee condition or an aggravation of appellant's sinusitis headache due to the January 28, 1995 incident.

Appellant also submitted a series of reports from Dr. David Suchard, a family practitioner. On February 2, 1995 Dr. Suchard noted appellant's history of injury and diagnosed left knee strain. He found mild tenderness in the lateral left knee. On February 9, 1995

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<sup>1</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>2</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>3</sup> *James Mack*, 43 ECAB 321 (1991).

Dr. Suchard reported that appellant had lateral left leg pain from her mid thigh to upper leg. He found that her gait was normal and that she demonstrated mild tenderness with ecchymosis lateral left thigh to upper leg. Dr. Suchard reported no knee joint line tenderness, no effusion and full range of motion with a negative McMurray's test and that appellant's knee was stable in all planes. He diagnosed left leg/knee strain -- mild.

On February 16, 1995 appellant complained of persistent knee and leg pain. Dr. Suchard again found that appellant's gait was within normal limits and diagnosed left knee strain. He did not provide additional medical reasoning or diagnosis until March 9, 1995. On that date Dr. Suchard diagnosed iliotibial band strain. On March 30, 1995 he diagnosed questionable left knee strain and noted that appellant had no iliotibial band tenderness.

Dr. Suchard did not offer any explanation for the delay of the appearance of appellant's left leg symptoms until February 2, 1995, several days after the date of injury. He also failed to address Dr. Lively's finding of no left leg or shoulder condition. Due to the January 28, 1995 report, which indicates that appellant has no left leg condition, appellant must submit a well-rationalized medical report explaining how and why her left leg condition would have developed over time due to the employment injury and why Dr. Suchard believed that the left leg condition was causally related to her employment injury. As appellant has not submitted the necessary medical evidence, she has failed to meet her burden of proof.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits on August 6, 1996.

Appellant requested reconsideration on July 26, 1996 and submitted additional evidence not previously considered by the Office. By decision dated August 6, 1996, the Office declined to reopen appellant's claim for consideration of the merits, finding that the evidence submitted was not relevant.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>4</sup> Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>5</sup>

Appellant submitted a report dated March 14, 1996 from Dr. Allan Bushnell, a physician practicing occupational medicine, who noted appellant's history of injury and reported normal contour to the left leg, normal color and normal knee motion. He found that appellant had no pain with internal or external knee rotation. Dr. Bushnell diagnosed iliotibial band tenderness. Appellant also submitted a note dated April 1996 from Dr. Bushnell stating that appellant's illiotibial band irritation was improving.

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<sup>4</sup> 20 C.F.R. § 10.138(b)(1).

<sup>5</sup> 20 C.F.R. § 10.138(b)(2).

These notes are not sufficient to require the Office to reopen appellant's claim for consideration of the merits as Dr. Bushnell did not provide an opinion on the causal relationship between appellant's diagnosed condition and her accepted employment incident. The Office denied appellant's claim as the medical evidence of record did not establish a causal relationship between her diagnosed left leg condition and the accepted employment incident. Medical evidence which does not address the issue for which the Office denied appellant's claim is not sufficient to require review of the merits.

The August 6 and April 24, 1996 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.  
August 28, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member