U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD CORTEZ and U.S. POSTAL SERVICE,
POST OFFICE, Houston, TX

Docket No. 98-1870; Submitted on the Record;
Issued February 17, 2000

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant met his burden of proof to establish that he sustained a left knee injury in the performance of duty on January 26, 1998.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a left knee injury in the performance of duty on January 26, 1998.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his 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 period 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.[2] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the 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.[4] Second, the employee must

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

[4] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[5] The term "injury" as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[6]

On February 3, 1998 appellant, then a 47-year-old letter carrier, filed a claim alleging that he injured his left knee at work on January 26, 1998 when he tripped and fell on his left knee. Appellant had previously injured his left knee when he was lifting boxes at home on November 22, 1997 and he began working in a light-duty position on December 15, 1997.[7] He stopped work on February 2, 1998 and underwent a partial medial meniscectomy of his left knee on that date. By decision dated April 8, 1998, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained an employment-related left knee condition on January 26, 1998.

Appellant did not submit sufficient medical evidence to establish that he sustained an employment-related left knee condition on January 26, 1998. In a report dated January 27, 1998, Dr. James B. Giles, an attending Board-certified orthopedic surgeon, described appellant's November 22, 1997 injury[8] and noted that appellant reported that pain and swelling from this injury had gradually resolved. Dr. Giles noted that appellant further reported that "[h]e was at work this week and noticed a similar episode where his knee buckled and he had sudden pain." Dr. Giles diagnosed a probable medial meniscal tear, but he did not provide a detailed description of the January 26, 1998 employment incident or otherwise provide a clear opinion that this incident caused or contributed to appellant's left knee condition.[9] This report, therefore, is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on causal relationship.[10]

[5] *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

[6] *Elaine Pendleton, supra* note 2; 20 C.F.R. § 10.5(a)(14).

[7] Appellant initially received treatment from Dr. David R. David, an attending Board-certified family practitioner.

[8] Dr. Giles indicated that appellant reported the injury occurred while he worked as a disc jockey, whereas appellant had otherwise indicated that the injury occurred at home while moving boxes.

[9] It should be noted that Dr. Giles did not treat appellant until January 27, 1998. The record contains a similar report of Dr. Giles dated February 18, 1998.

[10] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

The decision of the Office of Workers' Compensation Programs dated April 8, 1998 is affirmed.

Dated, Washington, D.C.
February 17, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member