

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT R. MUNOZ and U.S. POSTAL SERVICE,
POST OFFICE, Denver, CO

*Docket No. 98-159; Submitted on the Record;
Issued January 24, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty on November 13, 1996, as alleged.

On November 13, 1996 appellant, then a 51-year-old letter carrier, filed a notice of traumatic injury and claim for pay/compensation (Form CA-1) alleging that on the date in question he had a sore left knee while walking and going in and out of his postal vehicle.

In a letter dated November 26, 1996, the Office of Workers' Compensation Programs requested that appellant submit additional medical evidence in support of his claim, including a medical report from the private physician who examined him as a result of this injury.

Appellant forwarded a physician's initial report from Corporate Health and Medical Programs, Inc. (CHAMPS) dated November 13, 1996 which provided a diagnosis of left knee strain and opined that the injury was work related by checking a box. In a report of the same date, Dr. J. Chandler Major, an employing establishment physician, provided a history of appellant's injury and stated that appellant had a high likelihood of medial meniscus injury. In a November 14, 1996 report, Michael Deitz, PA-C, a physician's assistant, noted appellant's account of the events leading to his left knee pain and provided an assessment of osteoarthritis, left knee; post meniscectomy syndrome, left knee; and left knee strain. In a November 14, 1996 physician's supplemental report from CHAMPS, Mr. Deitz diagnosed a left knee strain and noted appellant could return to modified work the same day. Progress reports concerning appellant's condition were submitted along with duty status reports (Form CA-17) from Mr. Deitz which causally related appellant's left knee strain to stepping off a truck, by checking a box.

In a December 26, 1996 decision, the Office disallowed appellant's claim for compensation benefits finding that the evidence of record failed to establish that an injury was sustained, as alleged.¹

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on November 13, 1996, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act² 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 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.³ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

There is no dispute that appellant is a federal employee, that he timely filed his claim for compensation benefits, and that the workplace incidents or exposure occurred, as alleged. However, the medical evidence is insufficient to establish that appellant sustained an injury in the performance of duty on November 13, 1996.⁵

In the present case, the evidence appellant submitted consisted of clinic notes and progress reports issued on the date of his employment incident, November 13, 1996, and within a few weeks of the incident. These notes and reports described appellant's account of injury and related that appellant had sustained a left knee strain, but did not contain a rationalized, probative medical opinion from a physician sufficient to establish that appellant sustained an injury or disability on November 13, 1996 causally related to employment factors. Inasmuch as Dr. Major merely checked a box indicating that the history given by appellant corresponded to the description of how the injury occurred, without providing any supporting rationale, Dr. Major's opinion has little probative value and is insufficient to establish causal relationship.⁶ Further, the

¹ Appellant forwarded additional medical evidence along with a November 14, 1997 request for reconsideration. However, as the medical evidence was received after the issuance of the December 26, 1996 decision, the Board has no jurisdiction to review it; *see* 20 C.F.R. § 501.2(c). Moreover, the Board notes that appellant filed his current appeal on October 8, 1997. Inasmuch as the Board retained jurisdiction over the case as of October 8, 1997, appellant's November 14, 1997 request for reconsideration and the evidence contained therein may not be considered on appeal. *Id.*, *see also* 20 C.F.R. § 501.2(c); *Douglas E. Billings*, 41 ECAB 880 (1990).

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ Part of a claimant's burden of proof includes the submission of rationalized medical evidence based upon a complete factual and medical background showing causal relationship between the claimed injury and employment factors; *see Mary J. Briggs*, 37 ECAB 578 (1986); *Joseph T. Gulla*, 36 ECAB 516 (1985).

⁶ *See Ruth S. Johnson*, 46 ECAB 237 (1994).

Board notes that a physician's assistant is not defined as "physician" under the Act⁷ and, thus, the opinions rendered by Mr. Deitz are of little probative value and are insufficient to establish causal relationship.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.

As there is no reasoned medical evidence addressing and explaining why his claimed injury was caused by the November 13, 1996 employment incident, appellant has not met his burden of proof in establishing that he sustained a left knee strain causally related to employment factors. Thus, the Office's decision is affirmed.

The decision of the Office of Workers' Compensation Programs dated December 26, 1996 is hereby affirmed.

Dated, Washington, D.C.
January 24, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁷ See *Diane Williams*, 47 ECAB 613 (1996); *Shelia A. Johnson*, 46 ECAB 323 (1994); *Shelia Arbour (Victor E. Arbour)*, 43 ECAB 779 (1992).