

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANTHONY S. REINA and U.S. POSTAL SERVICE,  
POST OFFICE, West Palm Beach, FL

*Docket No. 98-1962; Submitted on the Record;  
Issued January 28, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained an injury while in the performance of duty.

On March 4, 1998 appellant, then a 55-year-old mailhandler, filed a traumatic injury claim (Form CA-1) alleging that on February 12, 1998 he sustained a left knee cartilage tear while putting mail in a bundle sorter dumper. He did not stop work. Appellant's claim was accompanied by a February 26, 1998 disability certificate from Dr. Bruce Berenson, an internist, providing a diagnosis of bursitis, that appellant could return to work on March 3, 1998 and that appellant could perform light-duty work with restrictions.

In a March 13, 1998 letter, the employing establishment controverted appellant's claim on the grounds that appellant did not report his injury for three weeks, appellant's account of the injury was inconsistent with the medical evidence of record, that appellant worked the remaining hours of his tour on February 12, 1998 and appellant worked eight hours on February 13 and 14, 1998 according to time and attendance reports. The employing establishment stated that there was no medical evidence of record establishing causal relationship.

The Office received the March 3, 1998 medical treatment notes of Dr. Joseph R. Purita, a Board-certified orthopedic surgeon, revealing appellant's complaints of left knee pain and a history that appellant injured his knee when he jumped down from a platform at work. Dr. Purita noted appellant's medical history, and his findings on physical and objective examination. He diagnosed possible torn meniscus.

By letter dated March 25, 1998, the Office of Workers' Compensation Programs advised the employing establishment that the evidence of record was insufficient to render a decision, but that appellant's pay should be continued without interruption. By letter of the same date, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office also advised appellant to submit medical evidence supportive of his claim.

Notes regarding an April 1, 1998 telephone conversation between appellant and the Office reveal that appellant was advised to submit Dr. Berenson's medical treatment notes. These notes also reveal that appellant did not tell Dr. Berenson about the alleged February 12, 1998 injury. These notes further reveal that there was a conflict regarding the history of appellant's alleged injury because Dr. Purita provided a different history of the alleged injury. These notes also reveal that the Office needed a medical report from Dr. Purita describing how the alleged injury occurred.

The Office received Dr. Purita's March 3, 1998 medical treatment notes which were previously of record. The Office also received Dr. Purita's March 3, 1998 duty status report (Form CA-17) indicating a history that appellant twisted his left knee when he removed equipment, a diagnosis of internal derangement of the left knee and appellant's physical restrictions. Additionally, the Office received an April 1, 1998 magnetic resonance imaging (MRI) report of Dr. Cary J. Hoffman, an orthopedic surgeon, revealing an impression of undersurface tear involving the medial meniscus with associated peripheral synovitis. The MRI report also showed a thin appearance to the anterior cruciate ligament (ACL) fibers which may be a manifestation of an old injury/partial tear of the ACL and no MRI evidence to suggest an acute injury or complete fiber bundle disruption of the ACL fibers. Further, the MRI report noted partial thickness chondral loss/degeneration involving the medial joint compartment, and there was a focal area of irregularity and subchondral reactive edema involving the posterior-superior articular surface of the medial femoral condyle which may be secondary to a previous osteochondral injury/defect in this region. Lastly, the MRI report indicated a small volume joint effusion. The Office also received Dr. Purita's April 2, 1998 medical note indicating a history that appellant twisted his knee while putting mail into a dumper machine with a manual forklift while the forklift was moving out.

By decision dated April 28, 1998, the Office found the evidence of record insufficient to establish that appellant sustained an injury as alleged on February 12, 1998.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an injury while in the performance of duty.

An employee seeking benefits under the Federal Employees Compensation Act<sup>1</sup> 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 limitations 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.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Daniel J. Overfield*, 42 ECAB 718 (1991).

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>4</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>5</sup>

Regarding the first component, appellant has alleged in his Form CA-1 dated March 4, 1998 that he sustained a left knee cartilage tear on February 12, 1998 while putting mail into a bundle sorter dumper. An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his subsequent course of action. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment, may cast sufficient doubt on an employee's statements in determining whether he has established a *prima facie* case. The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>6</sup>

In the present case, there is delayed notification by appellant to the employing establishment regarding his knee injury. The employing establishment properly noted in its March 13, 1998 letter controverting appellant's claim that appellant did not report his injury for three weeks. The employing establishment stated that on February 12, 1998 appellant continued to work his shift after the alleged knee injury. Further, the employing establishment stated that appellant worked an eight-hour shift on the two days following the date of the alleged injury. Although appellant submitted the February 26, 1998 disability certificate of Dr. Berenson, an internist, revealing a diagnosis of bursitis, which may be considered contemporaneous medical evidence, this disability certificate did not provide a detailed description of the history of appellant's knee injury. In fact, the record revealed that appellant did not mention the alleged injury to Dr. Berenson. The March 3, 1998 medical treatment notes of Dr. Purita, a Board-certified orthopedic surgeon, providing that appellant injured his knee when he jumped down from a platform at work is inconsistent with the history appellant provided in his Form CA-1, which indicated that he injured his left knee while putting mail into a bundle sorter dumper. Notwithstanding his March 3, 1998 Form CA-17 and April 2, 1998 medical note revealing a

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<sup>4</sup> *Elaine Pendleton, supra* note 2.

<sup>5</sup> 20 C.F.R. § 10.110(a); *see John M. Tornello*, 35 ECAB 234 (1983).

<sup>6</sup> *Merton J. Sills*, 39 ECAB 572 (1988); *Vint Renfro*, 6 ECAB 477 (1954).

history of injury that was consistent with the history provided by appellant, Dr. Purita did not explain why he changed his original description of the history of appellant's knee injury. In addition, the Board notes that Dr. Purita's April 2, 1998 medical note was prepared one day following appellant's telephone conversation with the Office concerning conflicting descriptions of his injury.

Upon consideration of this record as a whole, the Board finds that there are inconsistencies with the surrounding circumstances that cast serious doubt upon appellant's claim that he sustained an employment-related knee injury while putting mail into a bundle sorter dumper on February 12, 1998.<sup>7</sup> Consequently, appellant has failed to establish that he sustained a knee injury at the time, place and in the manner alleged.

The April 28, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

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

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>7</sup> *Merton J. Sills, supra* note 6; *Vint Renfro, supra* note 6.