U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AMBROSE C. FLORES and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

Docket No. 99-1314; Submitted on the Record;
Issued June 28, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he sustained a knee injury in the performance of duty on March 6, 1996.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a knee injury in the performance of duty on March 6, 1996.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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.[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

[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 2.803.2a (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 March 16, 1996 appellant, then a 50-year-old letter carrier, filed a claim alleging that he sustained a right leg and knee injury when he fell at work on March 6, 1996.[7] Appellant did not stop work but began working in a light-duty position.[8] By decision dated October 31, 1997, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a right knee injury in the performance of duty on March 6, 1996. By decisions dated December 4, 1997, March 30, 1998 and February 25, 1999, the Office denied modification of its October 31, 1997 decision.

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a knee injury in the performance of duty on March 6, 1996.

In support of his claim, appellant submitted a March 8, 1996 report, in which Dr. John W. Jaureguito, an attending Board-certified orthopedic surgeon, indicated that he examined appellant on that date. Dr. Jaureguito diagnosed status post right knee reconstruction and recommended that restrictions be placed on appellant's work. This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on causal relationship.[9] He did not list a date of injury or otherwise indicate that appellant sustained an employment injury on March 6, 1996. In a report dated May 17, 1996, Dr. Jaureguito stated that appellant reported to him on March 8, 1996 that he was "having pain with his job duties." He stated, "I did not have authorization to treat the patient for any type of fall and I have not treated him for a work-related injury." He indicated that on March 6, 1996 appellant exhibited normal range of motion and had a normal ligament examination without evidence of effusion. Dr. Jaureguito noted, "I have treated him for a condition that was nonwork related...." In his May 17, 1996 report, Dr. Jaureguito did not provide any opinion that appellant sustained an

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

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

[7] Appellant sustained a nonwork-related right knee injury on August 16, 1995. He underwent right knee surgery, including anterior cruciate ligament reconstruction and partial lateral meniscectomy with medial meniscus repair, on September 13, 1995. Appellant returned to work at the employing establishment on November 1, 1995. Appellant also filed a claim on March 1, 1996 alleging that he sustained injury to both legs and knees due to climbing stairs, bending, stooping and performing other duties required by his job. By decision dated June 20, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he did not submit sufficient medical evidence in support thereof.

[8] On December 22, 1997 appellant underwent a partial medical and lateral meniscectomy on his right knee and a partial lateral meniscectomy on his left knee.

[9] *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).

employment-related knee injury on March 8, 1996. In fact, Dr. Jaureguito's report reveals that appellant did not report the March 6, 1996 fall when he was examined two days later on March 8, 1996 and appellant's examination on March 8, 1996 was essentially normal.

In a report dated December 8, 1997, Dr. Jaureguito stated that appellant reported that he sustained a fall at work on March 6, 1996 which involved twisting his right knee and then falling on both knees. He indicated that he did not have an "independent recollection" of appellant telling him about the March 6, 1996 fall when he examined him on March 8, 1996.[10] Dr. Jaureguito diagnosed "bilateral anterior knee pain" and "rule out medial meniscus tear right knee" and stated, "Based on the patient's history, his findings on examination are consistent with the history obtained. The [appellant] does have symptoms consistent with a twisting injury to the right knee with a possible medial meniscus tear, confirmed both on physical examination and with MRI [magnetic resonance imaging]." He recommended that appellant undergo an arthropscopy. In a report dated July 24, 1998, Dr. Jaureguito stated that appellant's history of a fall in March 1996 was "compatible with his persistent symptoms following his injury, eventually requiring surgery in December 1997."[11] He recommended that appellant engage in sedentary work.

In his December 8, 1997 and July 28, 1998 reports, Dr. Jaureguito suggested that appellant sustained an injury to his right knee due to the March 6, 1996 fall at work but he did not provide a clear opinion on causal relationship. These reports are of limited probative value on the relevant issue of the present case in that he did not provide adequate medical rationale in support of his apparent conclusions on causal relationship.[12] Dr. Jaureguito did not provide any notable description of the March 6, 1996 employment incident and did not describe the medical process through which it could have caused appellant to sustain injury to his right knee. Such medical rationale is especially necessary in the present case in that appellant's right knee examination on March 8, 1996 was essentially normal.[13] He did not adequately explain why appellant's right knee problems would not be due to some nonwork factor such as his nonwork-related right knee injury in 1995.[14]

The decisions of the Office of Workers' Compensation Programs dated February 25, 1999 and March 30, 1998 are affirmed.

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[10] In his report, Dr. Jaureguito inadvertently listed the date of appellant's reported injury as March 6, 1997 and the date of his examination as March 8, 1997.

[11] Dr. Jaureguito again inadvertently listed the date of appellant's reported injury as March 6, 1997.

[12] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[13] As previously noted, appellant did not report the March 6, 1996 fall during his March 8, 1996 examination.

[14] In his July 24, 1998 report, Dr. Jaureguito stated, "I feel that it is possible that his condition was aggravated from prolonged mail carrying activities." This comment is of limited probative value in that it provides a speculative opinion on causal relationship; *see Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is speculative is of limited probative value regarding the issue of causal relationship).

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

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member