

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES E. HOFFMAN and U.S. POSTAL SERVICE,
POST OFFICE, Hudson, NY

*Docket No. 98-2104; Submitted on the Record;
Issued May 11, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an injury in the performance of duty on June 27, 1997.

On July 1, 1997 appellant, then a 46-year-old letter carrier, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that on June 27, 1997 he slipped on a loose floor tile and sprained his right knee. He did not cease work at the time of his injury and the employing establishment indicated that he refused any immediate medical attention. Approximately three months after his alleged injury, appellant received treatment in the Columbia Memorial Hospital emergency room. The October 3, 1997 emergency room discharge instructions note a diagnosis of right knee strain and "possible meniscal injury." At the time, appellant was instructed to cease work for four days. Additionally, the October 3, 1997 emergency room records included the following history of injury: "[One] month ago twisted right knee." Appellant was subsequently cleared to resume his regular employment duties on November 17, 1997. The employing establishment questioned appellant's claim for disability compensation in view of the fact that the first evidence of disability postdated the date of injury by more than three months.

By letter dated January 8, 1998, the Office of Workers' Compensation Programs requested additional factual and medical information. The Office specifically inquired as to why appellant waited more than three months before seeking medical attention for his claimed condition. In his February 1, 1998 response, appellant explained that he "wore a knee brace" and that his condition "just got worse everyday until [he] could n[o]t walk on it anymore." Additionally, the Office received treatment notes from Dr. Louis A. DiGiovanni, a Board-certified orthopedic surgeon. The notes indicated that he began treating appellant in February 1996 for injuries sustained to both his knees when he fell while bowling on February 11, 1996. Dr. DiGiovanni also treated appellant for a right ankle injury appellant sustained while at home on August 18, 1996. Dr. DiGiovanni's notes further indicated that appellant again sought treatment for his right knee on October 7, 1997. At that time, he noted

the following history of injury: “[Appellant] states approximately one month ago he was at work, [and he] slipped on a tile floor sustaining a right knee injury.”

By decision dated May 6, 1998, the Office denied appellant’s claim on the basis that the evidence failed to establish that he sustained a work-related injury as alleged. The Office explained that while the initial evidence of file supported the fact that appellant actually experienced the claimed incident, the evidence of record failed to establish that a medical condition resulted from the accepted incident. The Office specifically noted that both the October 3, 1997 emergency room records and Dr. DiGiovanni’s October 7, 1997 treatment notes reported a date of injury different from the June 27, 1997 employment incident claimed by appellant. Consequently, the Office concluded that the medical evidence did not support appellant’s claim that he had a medical condition arising from the reported employment incident of June 27, 1997.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty on June 27, 1997.

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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.¹ As previously noted, the Office accepted that appellant actually experienced the claimed employment incident of June 27, 1997. The second component is whether the employment incident caused a personal injury.² This latter component generally can be established only by medical evidence.³ In the instant case, the Office denied appellant’s claim based on his failure to satisfy this latter component.

The record indicates that appellant did not seek medical attention for his claimed right knee condition until more than three months after the June 27, 1997 employment incident. As the Office correctly noted, the relevant medical evidence from October 1997 does not specifically attribute appellant’s right knee condition to the June 27, 1997 employment incident. Instead, both the October 3, 1997 emergency room records and Dr. DiGiovanni’s recent treatment notes reported a history of injury that occurred approximately one month prior to the time appellant received medical treatment in early October 1997. Appellant, however, did not file a claim for a work-related injury occurring in September 1997. In view of the absence of any rationalized medical opinion evidence attributing appellant’s current right knee condition to the employment incident of June 27, 1997, appellant has failed to meet his burden of

¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *Id.*

³ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

demonstrating that the accepted employment incident resulted in a personal injury.⁴ Accordingly, the Office properly denied appellant's claim for compensation.

The May 6, 1998 decision of the Office of Workers' Compensation Programs is, hereby, affirmed.

Dated, Washington, D.C.
May 11, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

⁴ Moreover, the record indicates that appellant previously sustained a similar injury to his right knee in February 1996 while bowling.