

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JACK F. STEVENSON and U.S. POSTAL SERVICE,  
POST OFFICE, Jacksonville, FL

*Docket No. 00-1563; Submitted on the Record;  
Issued April 10, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury while in the performance of duty on August 7, 1999.

On August 7, 1999 appellant, then a 49-year-old letter carrier, filed a traumatic injury claim, alleging that his left knee popped while carrying his route on August 7, 1999 after he had twisted his knee twice on August 6, 1999.

In a report dated August 9, 1999, Dr. James Lovett, Jr., an attending physician, diagnosed left chondromalacia patella and noted that appellant initially twisted his knee twice on August 6, 1999 and then developed severe left knee problems the next day while walking up a hill.

By decision dated October 6, 1999, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that no injury had been established. The Office noted that appellant indicated that his knee popped while walking and thus no actual injury had occurred.

In a letter dated December 29, 1999, appellant requested reconsideration and submitted evidence in support of his request.

By merit decision dated February 17, 2000, the Office denied appellant's request for modification.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a work-related injury on August 7, 1999.

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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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.<sup>2</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

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.<sup>4</sup> Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>5</sup> 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.<sup>6</sup>

An injury does not have to be confirmed by eyewitnesses to establish the fact that an employee sustained an injury in the performance of duty, but the employee’s statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.<sup>7</sup> An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>8</sup> 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, if otherwise unexplained, cast sufficient doubt on an employee’s statements in determining whether a *prima facie* case has been established.<sup>9</sup> However, an employee’s statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>10</sup>

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<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> *Elaine Pendleton*, *supra* note 2; 20 C.F.R. § 10.5(a)(14).

<sup>7</sup> *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

<sup>8</sup> *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>9</sup> *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

<sup>10</sup> *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

In this case, the Board finds the evidence sufficient to establish that appellant experienced the knee “popping” incident at the time and place and in the manner alleged. Appellant’s statement dated December 29, 1999 explains in detail what happened on August 7, 1999 regarding appellant’s left knee. However, appellant has not submitted sufficient medical evidence to establish that he sustained an injury while in the performance of duty on August 7, 1999.

None of the medical reports provides an opinion that appellant sustained an injury due to the August 7, 1999 employment incident or other factors. In his report, Dr. Lovett diagnosed left chondromalacia patella and noted that appellant initially twisted his knee twice on August 6, 1999 and then developed severe left knee problems the next day while walking up a hill. No medical evidence containing a history of injury, a diagnosis, or an opinion supporting causal relation between the August 7, 1999 incident and any identifiable medical condition, was provided. Consequently, appellant has failed to establish that he sustained an injury within the meaning of the Act.

The decisions of the Office of Workers’ Compensation Programs, dated February 17, 2000 and October 6, 1999, are hereby affirmed as modified.

Dated, Washington, DC  
April 10, 2001

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member