

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS M. JACKSON and U.S. POSTAL SERVICE,
POST OFFICE, Edmonds, WA

*Docket No. 01-442; Submitted on the Record;
Issued August 30, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

On August 24, 2000 appellant, then a 42-year-old letter carrier, filed a notice of traumatic injury alleging that on August 23, 2000 he injured his left knee when he turned to place some mail into a hamper. Appellant did not stop work.

The employing establishment controverted this claim on August 26, 2000, and submitted evidence supporting that appellant had a preexisting left knee condition. In a response dated September 6, 2000, appellant specifically acknowledged that he had at least one prior accepted knee claim, and asserted that he felt the incident on August 23, 2000 had aggravated his prior knee condition.

By letter dated September 11, 2000, the Office of Workers' Compensation Programs requested additional medical and factual evidence from appellant stating that the initial information submitted was insufficient to establish that he sustained an employment-related knee injury, as alleged. The Office explained to appellant that the submission of a physician's opinion, supported by medical explanation as to how the August 23, 2000 work incident caused or aggravated his claimed injury, was crucial to his claim. In response to the Office's request, appellant submitted an unsigned clinic note dated August 28, 2000, dictated by Ivory V. Larry, a physician's assistant with the office of Dr. James D. Bruckner, a witness statement from a coworker and three form reports signed by Dr. Bruckner, a Board-certified orthopedic surgeon and treating physician.

In a decision dated October 18, 2000, the Office denied appellant's claim as the medical evidence was not sufficient to establish that appellant sustained a left knee injury on August 23, 2000 in the performance of duty, as required by the Federal Employees' Compensation Act.¹

¹ 5 U.S.C. §§ 8101-8193.

The Office found that there was no medical evidence submitted which discussed the causal relationship between appellant's diagnosed knee condition and his employment.

The Board finds that appellant has failed to establish that he sustained a knee injury in the performance of duty as alleged.

An employee seeking benefits under the Act 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 the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition, for which compensation is claimed is causally related to the employment injury.² 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.³

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 or engaged in the employment activities alleged to have occurred.⁴ In this case, it is undisputed that appellant's job duties involved placing trays of mail in a hamper, and the record also contains a witness statement from J. Jamison, stating that on August 23, 2000, he saw appellant wince in pain while placing his tray of letters in his hamper.

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 claimed, as well as any attendant disability, 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.⁵ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality,

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

In this case, while it is not disputed that appellant performed employment duties involving placing trays of mail into a hamper, and that appellant suffers from a preexisting left knee condition, the medical evidence is insufficient to establish that appellant's employment duties caused or otherwise contributed to his diagnosed conditions. While the August 28, 1998 clinic note states that appellant was examined by Dr. Bruckner, the note itself was dictated by a physician's assistant and is unsigned by a physician.⁷ Therefore, it cannot constitute medical evidence as a physician's assistant is not a physician under the Act.⁸ The record also contains two duty status reports signed by Dr. Bruckner on August 28 and September 25, 2000; however, these reports only list appellant's physical restrictions, and do not contain a diagnosis or other discussion of appellant's condition. Finally, the record contains an August 28, 2000 authorization for examination and/or treatment (Form CA-16) from Dr. Bruckner revealing "standing, twisted to put mail in hamper, knee gave out" as the history of appellant's injury, and noting that appellant had preexisting knee instability and arthritis, but no pain until the injury. Dr. Bruckner listed a diagnosis of patellofemoral mid knee compartment arthritis and loose body, and indicated by a check mark placed in the box marked "yes" that appellant's condition was caused or aggravated by the described employment activity. However, an opinion as to the relationship between appellant's diagnosed condition and the work incident, expressed only by check mark on a form and without explanation or rationale, is insufficient to establish causal relationship.⁹ The Board notes that as the record contains no medical evidence which contains a rationalized medical opinion on the causal relationship, if any, between appellant's work duties and his diagnosed left knee conditions, the medical evidence of record is insufficient to establish causal relationship¹⁰ and, therefore, insufficient to meet appellant's burden of proof.

⁶ *James Mack*, 43 ECAB 321 (1991).

⁷ In this note, Ms. Larry documents appellant's complaints of pain when twisting to put mail in a hamper on August 23, 2000, lists the physician's findings on physical examination and x-ray, and contains an assessment of "most likely patellofemoral pain due to arthritis. Possible loose body patella pouch."

⁸ *Jennifer L. Sharp*, 48 ECAB 209 (1996); *Thomas R. Horsfall*, 48 ECAB 180 (1996); *Diane Williams*, 47 ECAB 613 (1996); *Merton J. Sills*, 39 ECAB 572 (1988).

⁹ *Robert Lombardo*, 40 ECAB 1038 (1989).

¹⁰ *Lucrecia M. Nielsen*, 41 ECAB 583, 594 (1991).

The decision of the Office of Workers' Compensation Programs dated July 25, 2000 is hereby affirmed.¹¹

Dated, Washington, DC
August 30, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

¹¹ The Board notes that subsequent to the Office's October 18, 2000 decision, appellant submitted medical evidence. The Board cannot consider this evidence, however, as the Board has no jurisdiction to review evidence for the first time on appeal that was not before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c). Appellant may submit a request for reconsideration to the Office and ask that this new evidence be evaluated.