U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVEN J. FIEDLER and U.S. POSTAL SERVICE,
POST OFFICE, Glen Cove, NY

Docket No. 98-2382; Submitted on the Record;
Issued February 21, 2001

DECISION and ORDER

Before DAVID S. GERSON, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issue is whether appellant sustained a injury in the performance of duty.

On May 9, 1998 appellant, then a 43-year-old letter carrier, filed a traumatic injury claim, alleging that while loading food into the back of a truck he bent over and slipped, hitting his left knee on the ground. Appellant's supervisor stated that appellant complained about having to pick up food, that this work was voluntary and that appellant had two hours overtime after the incident. Appellant returned to work on May 11, 1998.

An emergency department report dated May 9, 1998, stated that appellant was treated for a left knee contusion and had an old knee avulsion. Another emergency medical report dated May 9, 1998, also diagnosed contusion and stated that appellant fell on his knee.

In duty status reports dated May 11 and 12, 1998, appellant's treating physician, Dr. Daniel Rick, indicated that appellant injured his knee on May 9, 1998 when he slipped on wet ground. Dr. Rick diagnosed knee sprain and probable torn lateral meniscus, and placed restrictions on appellant through May 11, 1998. On May 12, 1998 appellant accepted a limited-duty position at the employing establishment.

By letter dated May 29, 1998, the Office of Workers' Compensation Programs requested additional information from appellant, including more details on how the injury occurred and the names of his treating physicians. By another letter of the same date, the Office informed appellant that he must submit a physician's report with a medical explanation as to how the incident caused or aggravated the claimed injury.

An x-ray dated May 9, 1998 showed ossification of the lower patellar ligament but no fractures and no degenerative phenomena.

In a report dated May 12, 1998, Dr. Rick stated that three days earlier, appellant was on a food drive, slipped in the rain and twisted his left knee. Appellant developed pain laterally,

which was increased by weight bearing. Dr. Rick treated appellant "a number of years ago" for a meniscal tear on the right knee, which was managed successfully without an operation. Dr. Rick found no significant effusion but appellant had definite tenderness over the anterior lateral joint line and meniscal signs were positive on the lateral side. Dr. Rick opined that appellant might have a lateral meniscal tear. He prescribed a home quad exercise program, limited activity and anti-inflammatories.

In a follow-up report dated June 1, 1998, Dr. Rick stated that appellant was better but still had some anterolateral discomfort and was not fully functional. In a progress note dated June 18, 1998, Dr. Rick related that appellant had difficulty if he walked downstairs but otherwise was "quite functional." He added that there were no new findings, that appellant could referee a basketball game and that he should ride a bicycle as part of his rehabilitation of the quad mechanism. On July 10, 1998 Dr. Rick stated that appellant continued to require job restrictions.

By decision dated June 30, 1998, the Office denied appellant's claim, stating that he did not sustain an injury as alleged.

The Board finds that an incident occurred on May 9, 1998, as alleged, but the case is not in posture for decision.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[1] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[2]

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his employment; liability does not attach merely upon the existence of an employee/employer relation.[3] Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty. The Board has interpreted the phrase "while in the performance of duty" to be the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment."

[1] *Robert J. Krstyen*, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[2] *Id.*

[3] *Christine Lawrence*, 36 ECAB 422 (1985); *Minnie M. Heubner*, 2 ECAB 20 (1948).

"In the course of employment" deals with the work setting, the locale and the time of injury whereas "arising out of employment" encompasses not only the work setting but also a causal concept, the requirement being that an employment factor caused the injury.[4] In addressing the issue, the Board stated:

> "In the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at the time when the employee may reasonably be said to be engaged in his master's business; (2) at a place where he may reasonably be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of his employment or engaged in something incidental thereto."[5]

In this case, appellant alleged that he injured his left knee when he bent over to get a bag of food and slipped, hitting his left knee on the ground. The emergency medical room reports dated May 9, 1998, establish that appellant sustained a contusion to his left knee on that date in a fall. Dr. Rick's reports stated that appellant had a knee sprain and possibly a meniscus tear resulting from his fall when he slipped during a food drive on May 9, 1998. On the back of the claim form appellant's supervisor stated that appellant's picking up food was voluntary.

Appellant's statement, as corroborated by Dr. Rick's May 11 and 12, 1998 duty status reports, his May 12, 1998 report and, in part, the emergency room reports dated May 9, 1998, establish that appellant slipped during a food drive, fell on his left knee and sustained an injury to that knee. The Office's finding that an incident did not occur on May 9, 1998 is reversed.

The case must be remanded, however, for the Office to determine whether the incident occurred in the course of employment and use the proper analysis in determining whether appellant's activity at the time of the injury, assisting in a food drive, is covered by the Federal Employees' Compensation Act. After such further development as it deems necessary, the Office should issue a *de novo* decision.

[4] *Denis F. Rafferty*, 16 ECAB 413 (1965).

[5] *Carmen B. Gutierrez*, 7 ECAB 58 (1954).

The June 30, 1998 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further consideration consistent with this decision.

Dated, Washington, DC
February 21, 2001

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member