

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MONIKA HACKAUF and DEPARTMENT OF THE NAVY,
NAVAL OCEANOGRAPHIC OFFICE, STENNIS SPACE CENTER, MS

*Docket No. 01-1840; Submitted on the Record;
Issued April 19, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

On January 26, 2001 appellant, then a 47-year-old physical science technician, filed a traumatic injury claim alleging that she hurt her right knee on January 8, 2001 while on board the USNS Sumner. Appellant's supervisor, Gerald E. Oberlies, Sr., reported on the claim form that appellant told him and the ship's doctor that she did not slip or fall or otherwise hit her knee. He added that the ship's doctor stated that appellant might have "tendinitis, possibly from stress or strain."

Appellant stated that she experienced pain going up and down a ladder and through watertight doors that had high thresholds. In response to an inquiry from the Office of Workers' Compensation Programs, appellant explained that she was "not sure exactly" how her injury occurred. She added that she noticed pain and burning in her right knee a few days after boarding the ship, while walking or bending and climbing ladders or going through hatches.

In support of her claim, appellant submitted a February 2, 2001 report from Dr. M.F. Longnecker, Jr., an orthopedic surgeon, who noted that she told him of a twisting injury to her right knee on January 7, 2001. A magnetic resonance image (MRI) of the right knee revealed intact ligaments and tendons, with no definite indication of tears and early degenerative changes in the joint. Dr. Longnecker found inflammation and swelling of the right knee on examination, with mild arthritis. On a dispensary form, he noted that further sea duty was not recommended "because of right knee problems and chronic sea sicknesses."

By decision dated April 5, 2001, the Office denied appellant's claim on the grounds that she had failed to establish fact of injury. The Office noted discrepancies in her accounts of how the injury occurred.

Appellant requested reconsideration, arguing that her knees were "fine" before going to sea in January 2001 and that the physician on board "could see that I had sustained an injury" but

could not determine its nature. She added that she interrupted her two-month assignment to fly home and see an orthopedic surgeon, who diagnosed cartilage damage from twisting the right knee and recommended no further sea duty. Appellant stated:

“I may not have known the exact moment that my injury occurred aboard the ship, but as soon as I felt pain, I went to the ship’s doctor and reported it to my boss. As soon as possible, I flew home and saw my doctor. I have documentation that I was fine before the trip. I have documentation after returning from the trip that I was injured. There is no other time when my injury could have occurred. I did what I was supposed to do as soon as I could. I know it is not unusual for a person to not remember the exact moment when an injury occurs and to feel pain later. That is what happened to me.”

Appellant submitted a health certificate from Dr. Maurice A. Taquino, a practitioner in occupational medicine, finding her fit for sea duty and a report of his medical examination on December 26, 2000. Asked to comment, the employing establishment stated that appellant could not specify the date and time of her traumatic injury, but that she was required to climb stairs on the ship, which might have stressed the degenerative arthritis in her right knee.

By decision dated June 12, 2001, the Office denied modification of its prior decision on the grounds that the evidence submitted in support of reconsideration failed to specify the work factors that caused the alleged injury to appellant’s right knee.

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an injury in the performance of duty.

Under the Federal Employees’ Compensation Act,¹ an employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged by the preponderance of the reliable, probative and substantial evidence.² To determine whether an injury was sustained in the performance of duty, the Office begins with an analysis of whether fact of injury has been established.³

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 that is alleged to have occurred.⁴ The second component, whether the employment incident caused a personal injury, can generally be established only by medical evidence.⁵

¹ 5 U.S.C. §§ 8101-8193.

² *Michael W. Hicks*, 50 ECAB 325, 328 (1999); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Earl David Seal*, 49 ECAB 152, 153 (1997); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

⁴ *Linda S. Jackson*, 49 ECAB 486, 487 (1998).

⁵ *Michael E. Smith*, 50 ECAB 313, 316 (1999).

While an injury does not have to be confirmed by witnesses to establish that the employee sustained an injury in the performance of duty, the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action.⁶ An employee has not met her burden of proof when inconsistencies in the evidence cast serious doubt on the validity of the claim.⁷ Certain circumstances such 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* claim for compensation has been established.⁸

In this case, appellant has not established fact of injury because of inconsistencies in the evidence that cast serious doubt on whether she injured her knee at the time, place and in the manner alleged. She failed to report a specific time and manner in which she sustained an injury to her right knee. On her claim form she noted January 8, 2001 as the date of an unspecified injury to her right knee. Appellant later told Dr. Longnecker that a twisting injury to her right knee occurred on January 7, 2001. She responded to an Office inquiry that she was "not exactly sure" how the knee injury occurred. Then she stated that she noticed "pain and burning" in her right knee "a few days" after boarding the ship. Further, both the ship's doctor and appellant's supervisor agreed that appellant had not reported any slip or fall involving her right knee and that she confirmed that she had not hit her knee on anything.

Based on these conflicting and unexplained circumstances, the Board finds that appellant has failed to meet her burden of proof to establish that she sustained a right knee injury in the performance of duty.⁹

⁶ *Irene St. John*, 50 ECAB 521, 522 (1999).

⁷ *Christine S. Hebert*, 49 ECAB 616, 617 (1998).

⁸ *Anthony J. DeWilliams*, 48 ECAB 410 (1997).

⁹ See *Gene A. McCracken*, 46 ECAB 593, 596 (1995) (inconsistencies in appellant's account of how he injured his back created uncertainty about the time, place and manner in which the alleged injury occurred).

The June 12 and April 5, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
April 19, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member