U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN BARTEE and U.S. POSTAL SERVICE,
POST OFFICE, Mountain Home, ID

Docket No. 02-1910; Submitted on the Record;
Issued December 11, 2002

DECISION and ORDER

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

The issue is whether appellant sustained an injury in the performance of her federal duties.

On February 22, 2002 appellant, then a 57-year-old postal employee, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that on December 16, 2001 while walking on postal property on the Mountain Homes Air Force Base and prior to clocking in, she slipped on ice and twisted her knee. She indicated that the base had just drained the boiler (of water) and it ran down and froze on an inclined sidewalk.

In a February 28, 2002 letter, the Office of Workers' Compensation Programs requested more information.

In a March 4, 2002 letter, appellant explained that she was walking to work alone at the time the incident occurred. It was a Sunday morning and 3 to 4 inches of snow was on the ground. There were ruts in the snow-covered sidewalk from where other employees had walked. Appellant wrote that she did not see the ice because the light was burned out. She did not fall entirely to the ground, but twisted the left knee under her body landing, on her knee. She experienced severe pain that later subsided in severity but never went away. She did not stop working and informed her supervisor of the fall the next day. The alleged incident occurred on a Sunday morning and her supervisor was not present that day. According to appellant, the supervisor did not feel it necessary to do an accident report at that time. Appellant indicated that she did not seek immediate medical attention because she has a high threshold for pain and she thought the pain would go away.

On February 4, 2002 appellant twisted her knee again while lifting a heavy box. The pain shot through her entire knee area. She sought medical attention after that incident.

In a February 11, 2002 report, Dr. J. Goebel conducted a magnetic resonance imaging (MRI) scan and diagnosed a degenerative type tear of the medial meniscus associated with

moderate osteoarthritis of the medial compartment, mild to moderate sprain of the medial collateral ligament and an abnormal signal in the anterior cruciate ligament (ACL), consistent with acute injury but probable partial tear, popliteal tendon partial tear or inflammation, joint effusion and baker cyst.

In a February 18, 2002 report, Dr. Dominic Gross wrote "apparently in December [appellant] slipped on ice and injured her left knee and then she reinjured it. She is having pain, clicking, popping, instability and tenderness along the inside of her knee." Dr. Gross said the MRI scan showed a medial collateral ligament tear, medial meniscus tear and ACL tear, possible partial and osteoarthritis of the medial compartment.

In a March 11, 2002 letter, authorization for surgery was requested.

In a March 29, 2002 decision, the Office denied the claim finding that the evidence did not support the incident occurred at the time, place and in the manner alleged.

The Board finds that appellant has met her burden of proof to establish *prima facie* that an injury occurred in the performance of her federal duties.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 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.[2] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

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 she actually experienced the employment incident at the time, place and in the manner alleged.[4] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[5]

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

[4] *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).

[5] *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).

The injury does not have to be confirmed by eyewitnesses in order to establish that the employee sustain an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and her subsequent course of action.[6] Such circumstance 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 a claimant's statement in determining whether the claimant has established a *prima facie* case.[7] The employee has the burden to establish the injury occurred at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[8]

In the present case, appellant has submitted medical reports from Drs. Goebel and Gross diagnosing she had sustained an injury to her left knee. Dr. Goebel findings included mild to moderate sprain of the medial collateral ligament and an abnormal signal in the anterior cruciate ligament, consistent with acute injury but probable partial tear, popliteal tendon partial tear or inflammation, joint effusion and baker cyst.

In a February 18, 2002 report, Dr. Gross diagnosed a medial collateral ligament tear, medial meniscus tear and ACL tear, possible partial and osteoarthritis of the medial compartment.

The preponderance of the evidence supports appellant's allegations in terms of how the injury occurred. Appellant provided a very detailed account of the facts and circumstances surrounding her fall. She indicated that the injury occurred in the dark because the light was burned out and the employing establishment had not replaced it; there were three to four inches of snow on the ground and the sidewalk was covered with ice because the base had emptied the water from a boiler and it had run onto the sidewalk and froze. She indicated that there was no supervisor on duty the day the injury occurred because it was a Sunday. She told her supervisor at the next available opportunity, but he responded there was no need to do a report. Appellant indicated that she did not stop working and did not report the incident because the pain subsided, she has a high tolerance of pain and the injury did not prevent her from doing her job. The history she provided her physician's while seeking medical attention is consistent with the history in her Form CA-1. Her supervisor signed the Form CA-1 indicting to the best of his knowledge appellant's report was true.

Furthermore, the employing establishment has not contested any of appellant's factual allegations.

[6] *Theodore W. Manginen*, 15 ECAB 57 (1963).

[7] *George W. Clavis*, 5 ECAB 363 (1953).

[8] *Charles A.J. Cooley*, 15 ECAB 115 (1963).

The Board finds that appellant has established that the employment incident occurred as alleged and the case is remanded to the Office to review the medical evidence on the issues of causal relationship and disability.

The March 29, 2002 decision by the Office of Workers' Compensation is reversed and the case is remanded to the Office for further development consistent with this finding.

Dated, Washington, DC
December 11, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member