

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANICE M. HAMMER and DEPARTMENT OF HEALTH & HUMAN SERVICES, PUBLIC HEALTH SERVICE, Winnebago, NV

*Docket No. 02-2043; Submitted on the Record;
Issued December 16, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

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

On February 20, 2002 appellant, then a 52-year-old medical technologist, filed a traumatic injury claim alleging that on January 19, 2002 she pulled "something" in her right knee while getting up from checking why some large instruments were not working. Appellant returned to light duty, but filed a recurrence of disability claim on March 11, 2002.

On April 4, 2002 the Office of Workers' Compensation Programs informed appellant that the information she had submitted was insufficient to establish her claim and requested factual and medical evidence, including a rationalized medical opinion. The Office noted that appellant's initial claim was limited and provided 30 days for her to submit the requested evidence.

Appellant responded with medical reports from Dr. Thomas M. Chopp, a practitioner in orthopedics, who examined her on February 22, 2002, reported a four-week history of knee pain, and diagnosed a torn medial meniscus. He noted appellant's history of crawling around on the floor attempting to work on some equipment and right knee pain on getting up. In follow-up reports dated March 8 and April 19, 2002, he found clinical improvement of the meniscus tear and finally released her to full duty without restrictions.

On May 28, 2002 the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained an injury at work.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a knee injury while 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

In this case, the Office accepted that the incident at work on January 19, 2002 happened as appellant alleged. However, the medical evidence fails to establish that the diagnosed meniscus tear in appellant's right knee was caused by that work incident. A medical form dated January 22, 2002 reported swelling in the right knee due to trauma and indicated that the condition was work related but released appellant to regular work. This form contains no definitive diagnosis or explanation of how the swelling was caused by work factors.

Dr. Chopp's three reports are similarly deficient in medical rationale. On February 22, 2002 when he first treated appellant he diagnosed a medial meniscus tear in her right knee but did not opine that this condition was caused by the January 19, 2002 work incident. Dr. Chopp related the work incident and appellant's complaints of pain, but failed to provide a cause of the condition. He released appellant to work without restrictions.

In his March follow-up report, Dr. Chopp reported no clinical findings except for mild discomfort on palpation of the medial joint line and continued appellant's anti-inflammatory medication. In April he stated that the medial meniscus tear had resolved without permanent partial impairment. In neither report did he opine that the work incident resulted in a meniscus tear.⁶

Inasmuch as the Office informed appellant of the need to submit a rationalized medical opinion on the causal relationship between the work incident and her knee condition and appellant did not provide the requisite evidence, the Board finds that appellant has failed to meet

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).

⁶ *See Duane B. Harris*, 49 ECAB 170, 173 (1997) (finding that a medical report was insufficient to establish that the employment incident caused an injury).

her burden of proof to establish that she sustained a right knee injury while in the performance of duty.

The May 28, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
December 16, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member