

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JACK W. NIXON, III and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Atlanta, GA

*Docket No. 01-1883; Submitted on the Record;  
Issued July 29, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury in the performance of duty on October 5, 2000.

On November 13, 2000 appellant, then a 47-year-old patient service assistant, filed a notice of traumatic injury, Form CA-1, alleging that on October 5, 2000 while performing his duties, he sustained injuries to his right knee and low back.

Accompanying appellant's claim was employing establishment health records which included an October 5, 2000 entry where appellant gave a history of suffering back pain after bending over to file charts and then kneeling on the floor to file the charts and felt a pop in his right knee.

On December 5, 2000 the record was supplemented with a radiology report of an October 5, 2000 x-ray of appellant's lumbosacral spine interpreted by Dr. Abu W. Haque, a Board-certified radiologist, who gave a history of appellant kneeling and felt a pop in his knee and stated that the x-ray revealed an abnormality at the lumbrosacral junction requiring further evaluation and early peripheral atherosclerotic calcifications of the distal aorta. His interpretation of an October 5, 2000 x-ray of appellant's right knee giving the same history as above and stating that the x-ray revealed "low grade osteoarthritis of the right knee having minimal articular marginal lipping of the patella superiorly with small spurs in tibial spines, without loss of joint space or joint effusion; an October 6, 2000 follow-up x-ray of the spine interpreted by radiologist Hugh G. Murray, Jr. as showing spondylolisthesis of L5 which is displaced approximately five millimeters anteriorly upon S1; and an x-ray of appellants right knee taken on June 1, 1998.

By letter dated December 6, 2000, the Office of Workers' Compensation Programs requested detailed medical information from appellant and a history of injury as given to a physician.

By decision dated January 22, 2001, the Office denied appellant's claim. The Office found that the evidence of record failed to establish a causal relationship between the October 5, 2000 injury and appellant's medical condition.

On January 24, 2001 the record was supplemented with a January 12, 2001 report by Dr. H. Herndon Murray, a Board-certified orthopedic surgeon, who stated that appellant gave a history of injuring his back on October 5, 2000 while "... bending down filing some papers when he had back pain." Dr. Murray stated that he reviewed two sets of x-rays of the lumbar spine showing spondylolysis at L5 without definable spondylolisthesis and diagnosing lumbar strain and spondylolysis at L5.<sup>1</sup>

Appellant requested reconsideration on February 10, 2001.

On February 20, 2001 the record was supplemented with a February 13, 2001 report by Dr. Malcolm T. Simpson, a Board-certified family practitioner, who stated that he saw appellant on November 7 and December 11, 2000 and February 6, 2001 for lower back pain which he had for more than a month after squatting and lifting.

By decision dated May 2, 2001, the Office denied appellant's request for reconsideration finding that the evidence of record was insufficient to warrant modification. The Office stated that as a basis for its decision it found that appellant's history of injury was inconsistent and coupled with the delay in filing his claim cast doubt on the validity of appellant's claim.<sup>2</sup>

The Board does not find that there is any significant discrepancy in the factual evidence. Appellant stated on his November 13, 2000 claim form that while filing charts he had to bend down and heard a pop in his knee and back. On October 5, 2000 the day of the alleged injury appellant advised the employing establishment health unit that when bending over he experienced pain in his back so he knelt on the floor to file and heard a pop in his right knee. X-ray reports give a history of kneeling and felt pop in knee. Dr. Murray, in a January 12, 2001 report, stated that appellant reported that he experienced back pain on October 5, 2000 from bending down to file papers. In a February 13, 2001 report, Dr. Simpson stated that he saw appellant first on November 17, 2001 for low back pain which appellant had for more than a month from squatting and lifting. The Board finds that appellant has basically maintained that he bent over to file and experienced back pain so he knelt down to file and felt a pop in his right knee. The Board finds that the incident occurred as alleged.

However, the Board finds that appellant has failed to establish that he sustained an injury in the performance of duty on October 5, 2000 as a result of the incident.

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<sup>1</sup> The Board notes that the document at R40 does not belong to appellant in this case.

<sup>2</sup> The Board notes that the Office never requested clarification of any discrepancies in the history of injury as given by appellant.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> 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 and that the claim was filed within the applicable time limitations of the Act.<sup>4</sup> An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,<sup>5</sup> that the injury was sustained while in the performance of duty<sup>6</sup> and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.<sup>7</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>8</sup>

The medical evidence submitted, an October 5, 2000 employing establishment health records provided a history of injury and diagnosis, but failed to address a causal relationship between a diagnosed condition and the October 5, 2000 employment incident. The two October 5, 2000 and the October 6, 2000 reports of x-rays also failed to address a causal relationship between a diagnosed condition and the October 5, 2000 incident. As well, in his January 12, 2001 report Dr. Murray never mentions appellant's right knee. Dr. Murray provided a history of injury of bending down and experiencing back pain, diagnosed lumbar strain and spondyloysis, but failed to address the issue of causal relationship. In his February 13, 2001 report, Dr. Simpson also never mentioned appellant's right knee. He failed to provide a diagnosis, only states low back pain which is only a symptom, nor does he address the issue of causal relationship. None of the medical evidence provided a rationalized medical opinion causally relating a diagnosed condition to the October 5, 2000 employment incident. Therefore, none of the evidence is sufficient to establish appellant's traumatic injury claim.

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>6</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *Steven R. Piper*, 39 ECAB 312 (1987).

<sup>8</sup> *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

The decisions of the Office of Workers' Compensation Programs dated May 2 and January 22, 2001 are affirmed.

Dated, Washington, DC  
July 29, 2002

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member