U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREGORY J. GREENE and U.S. POSTAL SERVICE,
POST OFFICE, Fayetteville, AR

Docket No. 01-2055; Submitted on the Record;
Issued March 20, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
COLLEEN DUFFY KIKO

The issue is whether appellant met his burden of proof in establishing that he sustained an injury to his left knee in the performance of duty on July 15, 1999, as alleged.

The Board has reviewed the case record in the present appeal and finds that the Office of Workers' Compensation Programs properly determined that appellant failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on July 15, 1999, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning 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 an 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. Second, the employee must

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[1] 5 U.S.C. § 8101 *et seq.*

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Melinda C. Epperly*, 45 ECAB 196 (1993).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[4]

The Office, in its decision dated August 2, 2000, accepted the fact that appellant actually experienced the claimed incident. Therefore, appellant has established that he suffered an incident on July 15, 1999 at the time, place and in the manner alleged.

Nonetheless, the Board finds that appellant has not established that the July 15, 1999 incident caused an injury. The Office, in its letter dated May 19, 2000, requested that appellant submit medical evidence, including a "physician's opinion supported by medical rationale as to the causal relationship between [appellant's] disability and the injury reported." The medical evidence includes numerous reports by Dr. B. Raye Mitchell, appellant's treating Board-certified orthopedic surgeon, which indicate that appellant suffered a medial meniscus tear for which he underwent a left knee arthroscopy and partial medial meniscectomy on November 22, 1999. However, none of these opinions link appellant's knee injury to his work-related incident of July 15, 1999. In fact, Dr. Mitchell, in his report of September 22, 1999, indicates that appellant has had pain in his left knee for "at least six months now," which would indicate that appellant's problems with his left knee started before the July 15, 1999 incident at work. Accordingly, appellant has failed to meet his burden to establish that he sustained an injury to his left knee in the performance of duty causally related to the incident of July 15, 1999.

The Board has held that an award of compensation may not be based on surmise, conjecture or speculation, or appellant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment[5] or that work activities produce symptoms revelatory of an underlying condition[6] does not raise an inference of causal relationship between the condition and the employment factors.[7] Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.[8]

[4] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

[7] *Michael E. Smith*, 50 ECAB 313, 317 (1999).

[8] *Id.; Victor J. Woodhams*, *supra* note 3.

The decision of the Office of Workers' Compensation Programs dated August 2, 2000 is hereby affirmed.[9]

Dated, Washington, DC
March 20, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

[9] Appellant attempted to submit additional evidence on appeal. The Board's review is limited to the evidence that was before the Office at the time of its final decision. The Board therefore cannot consider this evidence. 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a).