

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES E. DUZAK and DEPARTMENT OF AGRICULTURE,
PAYETTE NATIONAL FOREST, FIREFIGHTER DIVISION, McCall, ID

*Docket No. 03-534; Submitted on the Record;
Issued April 7, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained a right knee injury in the performance of duty on August 11, 2002 as alleged.

On August 22, 2002 appellant, then a 47-year-old forestry technician and casual firefighter (smoke jumper), filed a claim alleging that he sustained a right knee sprain on August 11, 2002 while landing a parachute jump into the Sheep Creek fire. Appellant stated that as he landed, he "slipped on the decomposed granite and hyperflexed and twisted [his] right knee," noting that he heard a slight "pop" when this happened. Appellant then slipped in wet gravel and twisted his right knee again.

In a September 7, 2002 letter, appellant stated that he experienced increased pain and stiffness in the right knee and therefore sought treatment from Dr. Kenneth H. Akizuki, a Board-certified orthopedic surgeon.

In a September 12, 2002 slip, Dr. Akizuki ordered a magnetic resonance imaging (MRI) scan of the right knee to rule out a "medial meniscal tear -- chondral injury. DOI [date of injury] August 11, 2002."

In an October 2, 2002 letter, the Office of Worker's Compensation Programs advised appellant of the type of additional medical and factual evidence needed to establish his claim. The Office requested that appellant submit a "detailed narrative report" from his attending physician, containing a complete history of injury, test results, diagnosis and "an opinion on the relationship of the diagnosed condition to [his] [f]ederal employment activity." The Office noted that, if the requested information was not received within 30 days, appellant's claim might be denied.

In an October 9, 2002 MRI report, Dr. Frank Mainzer, a Board-certified radiologist, diagnosed a "tear of the posterior horn of the medial meniscus extending to the undersurface," and a subchondral cyst in the lateral femoral condyle.

In an October 28, 2002 slip, Dr. Akizuki prescribed Bextra for a four-month period.

By decision dated November 15, 2002, the Office denied appellant's claim for a right knee injury. The Office found that the August 11, 2002 incident occurred at the time, place and in the manner alleged. However, the Office found that appellant submitted insufficient medical evidence to establish that he sustained an injury resulting from the August 11, 2002 accident. The Office explained that Dr. Akizuki's prescription forms and the October 9, 2002 MRI report did not contain a complete history of injury, diagnosis and medical rationale setting forth a causal "relationship between the factors of [appellant's] federal employment" and the claimed injury.

Appellant filed his appeal with the Board on January 22, 2003.¹

The Board finds that appellant has not established that he sustained a right knee injury in the performance of duty on August 11, 2002.

A person who claims benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim, including that he sustained an injury while in the performance of duty and that he had disability as a result.³ To determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered one in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred. In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁴ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁵ The belief of claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.⁶

¹ On appeal, appellant submitted new medical evidence, an October 29, 2002 report from Dr. Marie D. Schafle. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant may submit this evidence to the Office accompanying a valid request for reconsideration.

² 5 U.S.C. §§ 8101-8193.

³ *Daniel R. Hickman*, 34 ECAB 1220 (1983); *see* 20 C.F.R. § 10.110(a).

⁴ *John C. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

⁵ *Lourdes Harris*, 45 ECAB 545 (1994); *see* *Walter D. Morehead*, 31 ECAB 188 (1979).

⁶ *Manuel Garcia*, 37 ECAB 767 (1986).

In this case, the Office accepted that on August 11, 2002 appellant executed a parachute jump into the Sheep Creek fire. However, the Office found that appellant submitted insufficient medical and factual evidence to establish that he sustained the claimed right knee injury as a result of that jump.

In support of his claim, appellant submitted two notes from Dr. Akizuki, an attending Board-certified orthopedic surgeon. In a September 12, 2002 slip, Dr. Akizuki ordered an MRI of the right knee to rule out a meniscal tear or chondral injury. Dr. Akizuki provided a date of injury of August 11, 2002. However, Dr. Akizuki did not provide a history of injury, mention appellant's employment as a smoke jumper, or that appellant attributed his right knee condition to a hard parachute jump landing on August 11, 2002. In an October 28, 2002 slip, Dr. Akizuki prescribed Bextra for a four-month period. Dr. Akizuki did not specify the condition for which he prescribed the medication. Neither of Dr. Akizuki's notes contains a complete history of injury, diagnosis, or medical rationale attributing a right knee injury to the August 11, 2002 jump. Thus, Dr. Akizuki's opinion is of very little probative value in establishing fact of injury in this case.⁷

Appellant also submitted an October 9, 2002 MRI report diagnosing a meniscal tear and subchondral cyst. This report does contain a definite diagnosis of two pathologies of the right knee. However, this report does not contain a date of injury, history of injury, or provide medical rationale explaining how the meniscal tear or subchondral cyst would be related to the August 11, 2002 jump. Without a history of injury, this report is also of greatly diminished probative value in establishing fact of injury.⁸

The Board notes that appellant was advised by an October 2, 2002 letter of the type of additional evidence needed to establish his claim, including a narrative report from his attending physician containing a complete history of injury, definite diagnosis and medical rationale explaining how and why the diagnosed condition was related to the August 11, 2002 incident. However, appellant did not submit such evidence.

Consequently, appellant has failed to establish that he sustained a right knee injury in the performance of duty, as he submitted insufficient evidence to establish that he sustained an injury resulting from the accepted August 11, 2002 parachute jump or any other factor of his federal employment.

⁷ *Gloria J. McPherson*, 51 ECAB 441 (2000).

⁸ *Calvin E. King*, 51 ECAB 394 (2000).

The decision of the Office of Workers' Compensation Programs dated November 15, 2002 is hereby affirmed.

Dated, Washington, DC
April 7, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member