

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEBRA K. HARTLEY and DEPARTMENT OF THE NAVY,  
NAVAL AIR SYSTEMS COMMAND, China Lake, CA

*Docket No. 03-1225; Submitted on the Record;  
Issued August 22, 2003*

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DECISION and ORDER

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

The issue is whether appellant has established that she sustained an injury on September 18, 2002 in the performance of duty.

On October 29, 2002 appellant, then a 49-year-old contract specialist, filed a claim for a traumatic injury occurring on that date when she tore cartilage in her right knee "while stepping up on shuttle bus stairs at Los Angeles International Airport." She stated that she was "returning home from official government travel" at the time of her injury. On the claim form, appellant's supervisor indicated that the date of injury was September 18, 2002. Appellant did not stop work.

In a letter dated February 6, 2003, the Office of Workers' Compensation Programs informed appellant that her claim was initially processed "as a simple, uncontroverted case which resulted in minimal or no time loss from work." The Office noted that, as she had now submitted medical bills in excess of \$1,500.00, it would adjudicate her claim. The Office requested additional factual and medical information from appellant, including a more detailed description of her injury and a comprehensive medical report addressing the causal relationship between any diagnosed condition and the October 29, 2002 employment incident.

On February 18, 2003 an official with the employing establishment indicated that appellant's injury occurred on September 18, 2002.

By decision dated April 1, 2003, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that she sustained an injury on September 18, 2002 in the performance of duty. The Office noted that she had not adequately explained how the incident occurred or submitted any medical evidence addressing causation.

The Board finds that appellant has not established that she sustained an injury on September 18, 2002 in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition is causally related to factors of her federal employment.<sup>2</sup> Where an employee is on a temporary-duty assignment away from her regular place of employment, she is covered by the Act 24 hours a day with respect to any injury that results from activities essential or incidental to her temporary assignment.<sup>3</sup>

However, the fact that an employee is on a special mission or in travel status during the time a disabling condition manifests itself does not raise an inference that the condition is causally related to the incidents of the employment.<sup>4</sup> A condition that occurs spontaneously during a special mission or in travel status is not compensable. The medical evidence must establish a causal relationship between the condition and factors of employment.<sup>5</sup>

In this case, appellant described her injury as occurring when she stepped up on shuttle bus stairs at the airport on her way home from official travel. As noted above, while on travel status appellant is covered 24 hours a day with respect to any injury that results from activities incidental to these duties. The employing establishment did not challenge her contention that she was on travel status at the time of the alleged employment incident of September 18, 2002. Appellant, therefore, would be covered for any injury established as occurring while returning home from official travel on September 18, 2002.

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. 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 which is alleged to have occurred.<sup>6</sup> An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.<sup>7</sup> An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>8</sup> Such circumstances such as late notification of injury, lack of confirmation of an injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> *Cherie L. Hutchings*, 39 ECAB 639, 643 (1988).

<sup>3</sup> *Richard Michael Landry*, 39 ECAB 232, 236 (1987).

<sup>4</sup> *Cherie L. Hutchings*, 39 ECAB 6339 (1988).

<sup>5</sup> *See William B. Merrill*, 24 ECAB 215 (1973).

<sup>6</sup> *See Elaine Pendleton*, 40 ECAB 1142 (1989).

<sup>7</sup> *Charles B. Ward*, 38 ECAB 667 (1989).

<sup>8</sup> *Tia L. Love*, 40 ECAB 586 (1989).

medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statement in determining whether a *prima facie* case has been established.<sup>9</sup> However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>10</sup>

In this case, the Office found that appellant had not submitted a sufficiently detailed description of the employment incident. The only factual evidence provided by appellant is her statement on the claim form that she injured herself "stepping up shuttle bus stairs" on October 29, 2002. The employing establishment subsequently clarified that the date of the incident was September 18, 2002. The Board finds that the employee submitted sufficient evidence to establish that this uncontroverted incident occurred on September 18, 2002.

However, the medical evidence is insufficient to establish that appellant sustained a right-knee condition causally related to the incident of climbing on an airport shuttle bus. To establish a causal relationship between a diagnosed condition and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such causal relationship.<sup>11</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>12</sup>

In this case, appellant has provided no medical evidence addressing the cause of her right knee condition. In support of her claim, appellant submitted magnetic resonance imaging (MRI) scans of her right and left knee dated October 1, 2002. On the MRI scan form for appellant's right knee, the radiologist noted that she "complain[ed] of chronic right knee pain and swelling" and diagnosed *inter alia*, "[m]uroid degeneration in the anterior horn of the right lateral and posterior horn of the right medial menisci, with likely radial tears" and degenerative arthritis of the medial and lateral joint compartments and of the patellofemoral articulation. The MRI scan of appellant's left knee revealed that she was status post medial meniscectomy on that side with "[m]uroid degeneration of the anterior horn of the left lateral meniscus without discernible tear, "[d]egenerative arthritis of the medial and lateral compartments of the knee joint" and "[d]egenerative arthritis of the patellofemoral articulation with chondromalacia patellae." The MRI scans as interpreted by radiologists reveal that appellant has multiple bilateral degenerative

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<sup>9</sup> *Doyle W. Ricketts*, 48 ECAB 167 (1996).

<sup>10</sup> *Earl David Seal*, 49 ECAB 152 (1997).

<sup>11</sup> *John M. Tornello*, 35 ECAB 234 (1983).

<sup>12</sup> *James Mack*, 43 ECAB 321 (1991).

knee conditions but do not address the issue of whether appellant sustained a traumatic injury to her right knee on September 18, 2002.

Appellant further submitted an operative report dated December 4, 2002 from Dr. Thomas L. Smith, an orthopedic surgeon, who performed an arthroscopy of appellant's right knee with a shaving of the underside of the patella and the medial femoral condyle, a resection of a medial plica and a lateral retinacular release. Dr. Smith diagnosed internal derangement of the right knee. He related:

“The underside of the patella rode considerably to the lateral side and had some grade two degenerative changes towards the medial half of the medial femoral condyle. There was a well developed plical band and ridge in this area. Coming into the medial compartment the medial meniscus was run in its entirety and felt to be normal. The ACL [anterior cruciate ligament] was normal. The lateral compartment lateral meniscus was examined and probed and felt to be essentially normal. At this time attention was turned to the rather large plical bland which was resected using a full radius cutter.”

Dr. Smith did not provide a history of injury or assign the cause of appellant's diagnosed condition of internal knee derangement to a traumatic injury occurring on September 18, 2002 or a chronic condition occurring over a longer period. Therefore, his operative report is of diminished probative value.<sup>13</sup>

In a progress note dated December 12, 2002, Dr. Smith noted that appellant was “eight days status post scope of the right knee with a lateral release of the retinaculum” and released her to return to work for four hours per day. To be of probative value in establishing injury, the opinion of a physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the causal relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>14</sup> In this case, Dr. Smith did not provide a factual or medical background or address causation and, thus, his report is insufficient to meet appellant's burden of proof.<sup>15</sup> The Office, therefore, properly denied appellant's claim for compensation.

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<sup>13</sup> *Michael E. Smith*, 50 ECAB 313 (1999) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>14</sup> *Bobby J. Parker*, 49 ECAB 260 (1997).

<sup>15</sup> *Id.*

The decision of the Office of Workers' Compensation Programs dated April 1, 2003 is affirmed as modified.

Dated, Washington, DC  
August 22, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member