

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT J. PITCHFORD and DEPARTMENT OF THE TREASURY,
FEDERAL LAW ENFORCEMENT TRAINING CENTER, Glynco, GA

*Docket No. 03-1415; Submitted on the Record;
Issued August 8, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on August 17, 2002.

On September 17, 2002 appellant, a 37-year-old law enforcement instructor, filed a traumatic injury claim alleging that he injured his right hip on August 17, 2002 when he stepped in a depression in a dirt road while running a class. Appellant's supervisor indicated that he agreed with the stated facts.

In support of his claim, appellant submitted medical reports from Dr. Michael J. Dunn, an attending physician, and Dr. David R. Knopf, a Board-certified diagnostic radiologist. In his reports dated September 16 and October 2, 2002, Dr. Dunn diagnosed right hip pain. In his September 16, 2002 report, Dr. Dunn noted that appellant injured his right hip on August 17, 2002 during a training class when he jammed his right hip after stepping into a hole. An x-ray interpretation revealed no abnormalities, but a physical examination revealed "positive tenderness over the anterior and posterior capsules." Dr. Knopf, in an October 2, 2002 magnetic resonance imaging (MRI) scan test, noted that there was "no significant hip joint effusion" and was essentially a negative study. Dr. Dunn, after reviewing the October 2, 2002 MRI scan, concluded a possible mild stress fracture due to the "increase signal uptake on T2 weighted images in the region of the base of the femoral neck on the medial side." He then determined that appellant was disabled due to a right hip stress fracture and was unable to work.

On February 21, 2003 the Office of Workers' Compensation Programs informed appellant that the evidence of record was insufficient to support his claim and advised him how to remedy the deficiencies in his claim.

On April 1, 2003 the Office issued a decision denying appellant's claim on the basis that he failed to establish that the event occurred as alleged and that the record contained no medical evidence relating an injury to the claimed event.

The Board finds that this case is not in posture for a decision.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that he sustained an injury while in the performance of duty.² 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 that is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.³

The Board finds that the factual evidence of record is sufficient to establish that appellant experienced the stepping into a hole at the time, place and in the manner alleged.

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁴

Appellant's account of the events of August 17, 2002 is confirmed by his supervisor and Dr. Dunn in his September 16, 2002 report. All parties agree that appellant stepped into a hole while running a class. There is no contradictory evidence denying appellant's contention that he stepped into a depression in a dirt road while running a class. The Board finds that appellant has established the incident occurred as alleged.

Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁵ An employee may establish that the employment incident occurred as alleged, but fail to show that his disability and/or condition relates to the employment incident.⁶

In the instant case, appellant submitted medical evidence from Dr. Dunn and Dr. Knopf, whose report is insufficient to support appellant's burden as he diagnosed an essentially negative

¹ 5 U.S.C. §§ 8101-8193.

² *Louise F. Garnett*, 47 ECAB 639 (1996); *Claudia A. Dixon*, 47 ECAB 168 (1995); *see also* 20 C.F.R. § 10.115.

³ *Deborah L. Beatty*, 54 ECAB ____ (Docket No. 02-2294, issued January 15, 2003).

⁴ *Betty J. Smith*, 54 ECAB ____ (Docket No. 02-149, issued October 29, 2002).

⁵ *Gloria J. McPherson*, 51 ECAB 441 (2000); *see John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001).

MRI scan study and made no mention of any history of the injury. Dr. Dunn, in his September 16, 2002 report, diagnosed right hip pain and noted the employment-injury history. In his subsequent report, Dr. Dunn concluded, after reviewing an October 2, 2002 MRI scan, that appellant had a right hip stress fracture. While the Office is correct that Dr. Dunn's diagnosis of right hip pain is not a compensable injury, his subsequent diagnosis of right hip stress fracture is a definite diagnosis and can be compensable.

Proceedings under the Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁷ In the instant case, although none of appellant's treating physician's reports contain rationale sufficient to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that he sustained a definitive injury or injuries, causally related to the August 17, 2002 incident, they constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of causal relationship between the August 17, 2002 incident and his right hip pain complaints, that is sufficient to require further development of the case record by the Office.⁸ Additionally, there is no opposing medical evidence in the record.

Therefore, the case must be remanded to the Office for further development of the medical evidence, including composition of a statement of accepted facts and referral to an appropriate medical specialist for a rationalized second opinion as to whether appellant sustained an August 17, 2002 incident-related injury or injuries.

The April 1, 2003 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further development consistent with the above opinion.

Dated, Washington, DC
August 8, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁷ *Horace L. Fuller*, 53 ECAB ____ (Docket No. 02-1181, issued September 6, 2002).

⁸ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).