

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JULIE BARABINO and DEPARTMENT OF DEFENSE,
DFAS, Seaside, CA

*Docket No. 03-1620; Submitted on the Record;
Issued December 9, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of her federal duties.

On February 27, 2002 appellant, then a 47-year-old accounting technician, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that on April 1, 2001 she scraped her knee and thigh which caused her problems going up and down stairs. Appellant's CA-1 form included a witness statement from LaDonna Andrews that corroborated that appellant scraped her knee while climbing down from her desk to close a window. Appellant submitted no medical evidence with her claim. In a November 7, 2002 letter, the Office of Workers' Compensation Programs notified appellant of the deficiencies in her claim. No further evidence was received.

In a December 16, 2002 decision, the Office denied the claim, finding that appellant failed to submit a detailed statement regarding the incident and failed to submit probative medical evidence.

In a February 20, 2003 letter, appellant requested reconsideration and submitted a January 20, 2003 report from Dr. Scott Kanter, a family practitioner, who noted that appellant's knee was bothering her and that a magnetic resonance imaging (MRI) scan was equivocal for a lateral meniscus tear and possibly an anterior cruciate ligament injury. In a January 16, 2003 report, Dr. Edwin Koumrian, an orthopedist, wrote that an MRI scan revealed degenerative changes in the distal posterior horn of the lateral meniscus and an indeterminate anterior cruciate ligament which was largely obscured. His physical examination revealed no joint effusion. The bone marrow signal intensity was normal except for what appeared to be an eight-millimeter round degenerative cyst in the medial tibial plateau. The lateral meniscus showed some linear signal compatible with cartilage degeneration in the distal portion of the posterior horn of the lateral meniscus. Dr. Koumrian also found the posterior cruciate ligament intact while the anterior ligament was indeterminate and largely obscured by amorphous medium signal

material that could be scar tissue. He found the medial and lateral collateral ligaments, the patellar tendon and the quadriceps tendon intact.

In a March 6, 2003 decision, the Office denied modification of the December 16, 2002 decision.

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of her federal duties.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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, that the claim was timely filed within the applicable time limitation period 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

An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met her burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.³

The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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 compensable 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.⁴

In the present case, appellant has not established that the incident occurred as alleged. Appellant filed her claim nearly 11 months after the alleged incident occurred though she indicated that she had immediate problems going up and down steps. There is no evidence in the record suggesting that appellant told her supervisor of the incident or sought immediate medical attention at the time of the alleged incident. The Office asked for greater detail, but no further factual evidence was received. Moreover, the medical evidence of record does not establish that

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Joseph Albert Fournier*, 35 ECAB 1175, (1984).

⁴ *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

a disabling medical condition was caused by the alleged incident. Neither Dr. Kantor nor Dr. Koumrian attributed appellant's knee condition to any employment factors. The physicians did not explain how the alleged incident would cause or contribute to appellant's knee condition. Absent such rationalized medical evidence appellant has not met her burden of proof.

The decisions by the Office of Workers' Compensation Programs dated March 6, 2003 and December 16, 2002 are affirmed.

Dated, Washington, DC
December 9, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member