



pain and restricted appellant to light duty. Dr. Kelley recommended a magnetic resonance imaging (MRI) scan of appellant's knees.

By letter dated April 21, 2003, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office requested that appellant submit additional medical and factual evidence supportive of his claim within 30 days.

A March 19, 2003 MRI scan noted a popliteal cyst and signal changes in the anterior cruciate ligament and posterior cruciate ligament suggestive of chronic change with no obvious abnormality involving the medial or lateral meniscus. In a March 27, 2003 treatment note, Dr. Kelley indicated a positive MRI scan, an assessment of knee pain and referral to an orthopedic surgeon. Appellant was to remain on modified activity. In an April 9, 2003 medical report, Dr. Neil Veggeberg, Board-certified in physical medicine and rehabilitation, noted appellant's past medical history of a meniscal repair on the left knee, running was a component of appellant's current work and that the MRI scan from Dr. Kelley showed no major pathology. He presented examination findings and opined that appellant had anterior knee pain. Dr. Veggeberg opined that "more than likely [appellant] has a change in his training habit or a change in the activity level that has put a sudden stress on his anterior knee region bilaterally." Physical therapy was recommended.

By decision dated May 27, 2003, the Office found the evidence of record sufficient to establish that appellant actually experienced the claimed incident, but insufficient to establish that he sustained an injury caused by the accepted incident. Accordingly, the Office denied appellant's claim for compensation..

In a June 9, 2003 letter, appellant requested reconsideration. He submitted a May 8, 2003 treatment report from Dr. Veggeberg which noted bilateral knee pain and examination findings. Appellant was to continue with physical therapy and continue working with no running. Physical therapy notes dated April 17, May 1 and 3, 2003 were submitted along with a Texas workers' compensation work status report dated July 17, 2003 which indicated that appellant may work full duty. Dr. Veggeberg was noted as the treating physician, although the report was not signed by him. In a June 23, 2003 report, Dr. Veggeberg noted that running is a component of appellant's occupation and that appellant had experienced significant burning pain in his knees bilaterally during the course of his run on March 14, 2003. He opined that the burning pain appellant experienced in his knees on March 14, 2003 arose as a natural course of his employment duties.

By decision dated July 14, 2003, the Office denied modification of the May 27, 2003 decision.<sup>1</sup>

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<sup>1</sup> Subsequent to the Office's July 14, 2003 decision, the Office received additional evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision; *see Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).

## LEGAL PRECEDENT

To determine whether an employee has sustained a traumatic injury in the performance of duty “fact of injury” must first be established.<sup>2</sup> 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.<sup>3</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>4</sup> An employee may establish that an injury occurred in the performance of duty but fail to establish that his or her disability or resulting condition was causally related to the injury.<sup>5</sup>

## ANALYSIS

The Office accepted that the March 14, 2003 incident occurred as alleged. The Office, however, found the medical evidence of record insufficient to establish a causal relationship between a diagnosed condition and the incident. The initial medical reports from Dr. Kelley and Dr. Veggeberg noted that appellant had bilateral knee pain and was placed on restricted work duties. These reports are insufficient to establish appellant’s claim because the physicians failed to provide a definitive diagnosis regarding appellant’s knee condition.<sup>6</sup> In a June 23, 2003 report, Dr. Veggeberg attributed the burning pain that appellant experienced on March 14, 2003 to the natural course of his employment duties. However, this report is insufficient to establish appellant’s claim because it fails to provide a specific diagnosis or adequate discussion of how appellant’s bilateral knee pain was caused or aggravated by the March 14, 2003 incident.<sup>7</sup> These opinions, therefore, are of diminished probative value as they lack a rationalized medical opinion on causal relationship, relating the knee condition to the accepted incident at work.<sup>8</sup> The Board notes that while, the March 19, 2003 MRI scan notes a presence of a popliteal cyst, none of the physicians of record addressed this condition.

The person seeking compensation benefits has the burden of proof to establish the essential elements of the claim. The Office advised appellant of the type of evidence required to establish his claim; however, he failed to submit such evidence. Appellant did not provide a rationalized medical opinion to describe or explain how the March 14, 2003 employment-related incident caused the claimed injury. As appellant has failed to submit any probative medical

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<sup>2</sup> *Neal C. Evins*, 48 ECAB 252 (1996).

<sup>3</sup> *Michael W. Hicks*, 50 ECAB 325, 328 (1999).

<sup>4</sup> 5 U.S.C. § 8101(5); 20 C.F.R. § 10.5(ee) (1999) (defining injury).

<sup>5</sup> *Earl David Seal*, 49 ECAB 152, 153 (1997); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

<sup>6</sup> *Daniel Deparini*, 44 ECAB 657, 659 (1993).

<sup>7</sup> *Id.*

<sup>8</sup> *See Ruth Seuell*, 48 ECAB 188, 193 (1996); *Val D. Wynn*, 40 ECAB 666, 668 (1989); *E. Geral Lamboley*, 34 ECAB 1414, 1416 (1983).

evidence establishing that he sustained an injury in the performance of duty, the Office properly denied his claim for compensation.

**CONCLUSION**

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty on March 14, 2003.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 14, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 10, 2003  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member