

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES A. STEVENS and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Indianapolis, IN

*Docket No. 03-460; Submitted on the Record;
Issued June 25, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an injury in the performance of duty on May 3, 2002.

On May 3, 2002 appellant, then a 52-year-old mailhandler, filed a claim for traumatic injury, alleging that on that day he injured his leg causing inflammation below the right knee while in the performance of duty. In the section marked cause of injury, appellant noted that the exact cause was unknown. He then added: "Doctor says even a small bump or overuse can possibly cause this condition. Moving bulk mail containers (BMC) near dock."

In reports dated May 3, 9 and 16, 2002, Dr. Kenneth Kirkman, appellant's attending physician, diagnosed right lower leg strain and pain and restricted him to sitting duties. In a report dated May 22, 2002, he noted that appellant's right knee pain had resolved and released him to full duty without restrictions effective that day.

In a report dated May 30, 2002, the employing establishment controverted appellant's claim, noting that he failed to describe a specific injury on May 3, 2002. On May 31, 2002 the employing establishment offered appellant a limited-duty position.

By letter dated July 1, 2002, the Office of Workers' Compensation Programs advised appellant regarding the kind of evidence he needed to support his claim of injury on May 3, 2002. The Office noted that appellant needed a physician's report, describing the history of injury given by him to his physician and his physician's opinion, supported by a medical explanation, as to how the work incident caused his injury. In a letter dated July 2, 2002, appellant stated that his injury occurred the day before he went to the clinic. At that time, he felt

a sudden pain in the right knee as he was unloading a trailer. He finished work that day but that the pain returned the following day at which time he sought medical treatment.¹

By decision dated August 8, 2002, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that his condition was caused by the May 3, 2002 incident.²

By letter dated August 21, 2002, appellant requested reconsideration.

In support of his request, appellant submitted an August 13, 2002 report from Dr. Kirkman who stated with regard to appellant's "May 22, 2002 injury," that "there was never any question ... that [appellant's] right knee pain was due to his work activity. His onset of pain initially was while he was working and his pain worsened the next day while he was working." He added: "Pushing heavy loads requires full activity of both knees. Injury can occur with only minimal pain at onset and worsen later. [Appellant] was pushing heavy 'cans' when he felt a sudden pain in the right knee. It was mild and resolved quickly, but returned and worsened the following day."

In a decision dated September 30, 2002, the Office denied modification of the August 8, 2002 decision. The Office noted that Dr. Kirkman stated that appellant's date of injury was May 22, 2002 while appellant's claim alleged the injury occurred on May 3, 2002. The Office noted that Dr. Kirkman stated that appellant's injury occurred while he was pushing "cans," while appellant alleged that it occurred when he was unloading a trailer. The Office found that, without a consistent date of injury as well as the mechanism of injury, the medical evidence was of little probative value.

The Board finds that appellant failed to establish that his medical condition was causally related to his employment.

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 filed within the applicable time limitation of the Act; that an injury was sustained while 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴ Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether

¹ Appellant appears to state that his initial pain occurred on May 2, 2002 and that it was only after a subsequent episode of pain on May 3, 2002 that he sought medical treatment at the employing establishment's clinic.

² It is unclear whether the Office accepted that an incident occurred on or about May 3, 2002.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Rebecca LeMaster*, 50 ECAB 254 (1999).

there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁵

In his August 13, 2002 report, Dr. Kirkman stated that appellant's right knee injury was caused by activities at work, when he felt a sudden right knee pain while pushing cans.⁶ Appellant noted that he felt pain on May 3, 2002 when he was unloading a trailer. It is well established that a claimant cannot establish fact of injury if there are inconsistencies in the evidence that cast serious doubt as to whether the specific event or incident occurred at the time, place and in the manner alleged.⁷ The Board notes, however, that an employee's statement regarding the occurrence of an employment incident is of great probative value and will stand unless refuted by strong or persuasive evidence.⁸ Absent opposing evidence and noting the employing establishment's initial concurrence that an incident occurred on May 3, 2002, the Board finds therefore that the incident occurred as alleged on May 3, 2002.

However, in order to establish fact of injury, appellant must submit probative medical evidence establishing causal relationship between a diagnosed condition and the employment incident. The medical evidence in this case consists of several reports from Dr. Kirkman, appellant's treating physician. None of these reports related appellant's condition to his employment and thus are of little probative value.⁹ In his August 13, 2002 report, Dr. Kirkman stated that appellant's injury occurred on May 22, 2002 when appellant was pushing cans. This report does not reflect an accurate history of the incident and fails to explain how pushing the cans caused appellant's right leg strain and pain. Dr. Kirkman did not indicate how much the cans weighed, how far appellant was required to push them, how frequently he pushed them, or provide the results of a physical examination of appellant's right lower extremity, he did not provide a rationalized medical opinion establishing a relationship between the right leg and knee condition and appellant's employment. Appellant failed to establish through medical evidence that the May 3, 2002 incident caused his medical condition.

⁵ *Bonnie Goodman*, 50 ECAB 139 (1998).

⁶ Although Dr. Kirkman stated that appellant's injury was on May 22, 2002, he treated appellant on May 3, 9, 16 and 22, 2002. His May 22, 2002 report released appellant to return to full duty the next day. The Board finds that the context of all of Dr. Kirkman's reports establishes that he meant to report that appellant's injury was sustained on May 3, 2002, not May 22, 2002.

⁷ *Gene A. McCracken*, 46 ECAB 593 (1995); *Mary Joan Coppolino*, 43 ECAB 988 (1992).

⁸ *Thelma Rogers*, 42 ECAB 866 (1991).

⁹ *Annie L. Billingsley*, 50 ECAB 210 (1998).

The decisions of the Office of Workers' Compensation Programs dated September 30 and August 8, 2002 are modified to reflect an employment incident as alleged and affirmed as modified.

Dated, Washington, DC
June 25, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member