

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHILIP V. CRUMIEL and U.S. POSTAL SERVICE,
SNAPPER CREEK ANNEX, Kendall, FL

*Docket No. 01-2272; Submitted on the Record;
Issued March 27, 2003*

DECISION and ORDER

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

The issue is whether appellant has established that he sustained an injury to his knees causally related to his federal employment.

On February 26, 2001 appellant, then a 53-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he injured his left knee as a result of "many years of constant stop and driving and hitting my left knee on the steering wheel column." He also noted that the mounting and dismounting on his route caused damage to both knees. The employing establishment controverted appellant's allegations by noting that appellant was assigned a motorized delivery route, which would eliminate any need for dismounting. The employing establishment alleged that appellant's private vehicle, a pick-up truck, was more difficult to enter and exist than his government vehicle.

In support of his claim, appellant submitted a February 20, 2001 report by Dr. Michael B. Wittels, a Board-certified orthopedic surgeon, who indicated that appellant was under his care for extreme pain in both his knees and that appellant required an osteotomy of the proximal left tibia. He noted that many years of postal activities have contributed to the damage in appellant's knees. He specifically noted that walking, climbing stairs, driving, continuously dismounting vehicles while carrying heavy packages and occasionally hitting his knee on the dashboard and steering wheel have contributed to the wearing and tearing of the cartilage and internal bruising.

By letter dated May 29, 2001, the Office of Workers' Compensation Programs requested that appellant submit further information including, *inter alia*, an explanation as to why it took him over one year from when he first realized that his knee condition was caused by his employment to file a claim, a description of activities outside of his federal employment and further medical evidence. Appellant was also asked to comment on the assertions of the employing establishment that he was on a motorized route that eliminated any dismounting from his postal vehicle. In response, appellant submitted a duty status report wherein Dr. Wittels indicated, *inter alia*, that appellant was limited to continuous lifting of one pound and intermittent lifting of two to seventy pounds. No further response was received.

By decision dated July 27, 2001, the Office denied appellant's claim as it found that the evidence was not sufficient to meet the guidelines for establishing that appellant sustained a work injury. The Office noted that appellant did not explain why it took him over one year to file the claim nor did he provide a clarifying statement regarding his work duties. Finally, the Office noted that the medical evidence was not sufficient to establish his claim.

The Board finds that appellant failed to establish that he sustained an injury causally related to his federal employment.

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 These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴

An injury does not have to be confirmed by eyewitnesses in order to establish that the 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 subsequent course of action.⁵ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.⁶ However, an employee's

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁴ *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁶ *Shirley A. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

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.⁷

In the instant case, appellant alleged that he sustained an injury as a result of driving and hitting his left knee on the steering wheel and also from mounting and dismounting on his route. However, the employing establishment countered that appellant's route was a motorized route, which eliminated any dismounting from his vehicle, and that getting out of his private vehicle, a pick-up truck, would be more difficult than getting out of his government vehicle. Furthermore, appellant alleged that he first realized that his disease was caused or aggravated by his employment on January 1, 2000, but he failed to file a claim for injuries until February 26, 2001, over one year later. Appellant was given the opportunity to respond to the employing establishment's allegations and to explain his late filing, but he failed to do so. Accordingly, appellant has failed to establish "fact of injury" due to conflicting evidence as to the duties of his position and how the alleged injury occurred.

The decision of the Office of Workers' Compensation Programs dated July 27, 2001 is hereby affirmed.

Dated, Washington, DC
March 27, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁷ *Doyle W. Ricketts*, 48 ECAB 167, 170 (1996).