

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY M. KEARNEY and DEPARTMENT OF THE ARMY,
Fort Benjamin Harrison, IN

*Docket No. 03-6; Submitted on the Record;
Issued March 7, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant established that her right knee condition was causally related to the November 22, 1988 work-related injury.

On November 23, 1988 appellant, then a 59-year-old shipping clerk, filed a claim alleging that, on November 22, 1988, she “fell down the stairs to the basement,” and strained both ankles, pulled muscles in her neck and back, and bruised her left knee and left elbow. The Office of Workers' Compensation Programs accepted that appellant sustained a cervical and thoracic strain, right ankle sprain and aggravation of left knee arthritis. The Office also authorized knee arthroscopy.¹

By letter dated August 4, 1999, appellant, through counsel, requested approval for right knee surgery.

By letter dated February 9, 2000, appellant, through counsel, requested a status update on her claim for a work-related right knee injury.

By letter dated March 3, 2000, the Office advised appellant of the evidence required to develop a claim for a right knee injury.

In a report dated March 14, 2000, Dr. Vern Cooley, appellant's treating physician, stated that appellant had right knee osteoarthritis and recommended right knee replacement surgery.

¹ The Board notes that the Office, on February 11, 1997, stated that appellant injured herself when she fell “and landed on her knees, right shoulder and right elbow.” In a report dated March 3, 2000, the claims examiner stated that the “record indicates that [appellant] struck her right knee on November 22, 1988, even though she did not report it immediately.” However, appellant's November 23, 1988 claim made no reference to her right knee or right shoulder.

In a report dated September 1, 2000, Dr. G. Lynn Rasmussen, appellant's treating physician and a Board-certified orthopedic surgeon, stated that appellant complained of right knee pain and scheduled surgery for November 1, 2000.

In a report dated April 13, 2001, Dr. Rasmussen stated that appellant's right knee "is symptomatic and she is in need of a total knee replacement."

In a letter dated May 7, 2001, the Office advised appellant that it had not accepted that her right knee condition was caused by her accepted injury, and again requested that she submit medical evidence to support her claim.

In a letter dated March 28, 2002, appellant requested authorization for right knee surgery.

In a report dated June 4, 2002, Dr. Kim C. Bertin, appellant's treating physician and Board-certified orthopedic surgeon, requested authorization for right knee surgery.

By decision dated June 24, 2002, the Office denied appellant's claim that her right knee condition was caused by her accepted employment injury.

The Board finds that appellant has not established that her right knee condition is causally related to the November 22, 1988 work-related injury.

An employee seeking benefits under the Federal Employees' Compensation Act² 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. These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In this case, none of the medical evidence establishes a causal relationship between her right knee condition and the November 22, 1988 work-related injury. Appellant's claim noted that she fell down a flight of stairs to the basement, and that she sustained injuries to her ankles, left big toe, neck and back and left knee and elbow. Her subsequent medical reports from Drs. Cooley, Rasmussen and Bertin address a right knee condition and request surgical authorization. However, none of the physicians provided a medical report with a full history of injury or a rationalized medical opinion establishing a causal relationship between her right knee condition and the November 22, 1988 work-related injury.

Since appellant has not submitted sufficient medical evidence establishing a causal relationship between her employment and her right knee condition, she has failed to meet his burden of proof.

² 5 U.S.C. §§ 8101-8193.

³ *Trina Bornejko*, 53 ECAB ____ (Docket No. 01-1118, issued February 27, 2002).

The decision of the Office of Workers' Compensation Programs dated June 24, 2002 is affirmed.⁴

Dated, Washington, DC
March 7, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁴ In a letter dated November 7, 2002, appellant, through counsel, noted her desire to have an oral hearing. The Board does not have jurisdiction over the matter of an oral hearing in the present appeal. 20 C.F.R. § 501.2(c). Further, the Board notes that this case record contains evidence which was submitted subsequent to the Office's June 24, 2002 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *Id.*; *James C. Campbell*, 5 ECAB 35, 36 n. 2 (1952).