

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CLARICE D. DURIVAGE and U.S. POSTAL SERVICE,  
POST OFFICE, Johnson, UT

*Docket No. 03-1827; Submitted on the Record;  
Issued October 10, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that she sustained a right knee condition on December 22, 2000 causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for reconsideration of the merits of her claim.

On December 27, 2000 appellant, then a 63-year-old rural carrier, filed a claim alleging that on December 22, 2000 she bent down on her right knee during the course of her work duties and experienced pain, which got progressively worse during the day and caused her to limp by the end of the day. She first received medical care on December 23, 2000. Appellant returned to light-duty work and underwent an arthroscopy on her right knee on September 6, 2001. Following the arthroscopy, she was released to full-duty work on November 13, 2001.

In the medical note of December 23, 2000, Dr. Michael R. Sampson, a Board-certified family practitioner, indicated that appellant had leaned into the back of her jeep, with her right knee leaning into the bumper. He advised that she had no specific injury to her knee, but it did get swollen and was very stiff. Examination showed an obvious effusion and medial joint line tenderness. Stability was intact and there was no redness or warmth. Dr. Sampson provided an assessment of meniscal injury vs. arthritis vs. gout. Appellant's knee was placed in a knee immobilizer, but no anti-inflammatory medication was provided as she had another surgery scheduled. In an undated Form CA-20, Dr. Sampson advised that appellant had a possible meniscal injury which was causally related to her employment duties. He opined that she was able to return to light-duty work on January 2, 2001.

In a December 29, 2000 report, George Connelly, a physician's assistant with the employing establishment's contract medical facility, noted that appellant was kneeling down for processing a large package and was also leaning against the bumper of her jeep and had developed knee pain. It was noted that she was working increased hours over the past few weeks. Appellant finished her route and had increasing diffuse anterior knee pain and swelling. No prior knee problems were reported. No actual traumatic injury was noted. It was further

noted that appellant had kneeled and leaned on her knee like this in the past without experiencing knee pain. No provocative home activities were noted. Findings on examination were provided. X-ray of the knee showed mild-to-moderate degenerative joint disease. An assessment of right knee patellofemoral pain syndrome with patellar tendinitis and probable synovitis was provided. Conservative treatment, including physical therapy, was prescribed. Appellant was released to work with restrictions.

In a January 4, 2001 report, Mr. Connelly noted examination findings and assessed right knee patellofemoral pain syndrome with a component of patellar tendinitis and resolved synovitis. A diffuse medical knee strain was also assessed.

By decision dated May 11, 2001, the Office denied appellant's compensation claim on the grounds that she had not been diagnosed with a medical condition in connection with her work activities on December 22, 2000. The Office advised that the medical reports from Mr. Connelly were not considered reliable as he was not a physician under the Federal Employees' Compensation Act and Dr. Sampson had not provided a definitive diagnosis.

Appellant disagreed with this decision and, through her attorney, requested an oral hearing, which was held on August 29, 2002. Additional evidence was submitted.

In an August 13, 2001 medical report, Dr. William Mercier, a physician at Immediate Health Care, diagnosed appellant's condition as being patellofemoral arthrosis, degenerative arthritis medial compartment and possible medial meniscus tear with a possible component of pes anserine bursitis. He advised that the patellofemoral arthrosis was preexisting, but clearly could be aggravated by the mechanism and work activity she described. He further opined that the anterior compartment symptoms (patellofemoral) were aggravated by her work activities of December 22, 2000.

In a May 8, 2001 medical report, Dr. Stephen Glen Neale, a Board-certified orthopedic surgeon, noted that appellant apparently injured her knee sometime prior to Christmas. It was related to squatting down and twisting on it. Dr. Neale provided his examination findings and opined that appellant had a meniscus tear with some secondary patellofemoral pain and recommended an arthroscopy. She underwent a right knee arthroscopy on September 6, 2001. In the history and physical section of the surgical report, Dr. Neale advised that appellant's medial knee pain was related to a squatting injury suffered at work. He advised that appellant had developed significant pain and was sent to Occupational Health and Rehabilitation where she was treated conservatively but developed continued pain. Most of her pain was along the medial joint line. Dr. Neale noted that appellant was admitted for elective right knee arthroscopy. Examination of the right knee showed an effusion. Appellant had pain with full flexion and tenderness along the joint lines on both sides more along the medial than the lateral joint line. Apprehension test was negative. Patellar grind test was equivocal. Appellant had a positive Apley grind test. McMurray test exacerbated her symptoms. Straight leg raise was negative. Bounce test was mildly positive.

In an October 5, 2001 report, Dr. Neale stated that, by appellant's history, she injured her knee prior to Christmas of 2000. This was related to a significant amount of squatting down and twisting on it. Dr. Neale noted that appellant attended Occupational Health and Rehabilitation

and was referred to him because of her continued symptoms. He noted that appellant underwent an arthroscopic evaluation and debridement of her joint. Dr. Neale opined that the injury of December 22, 2000 necessitated the arthroscopic surgery she underwent on September 6, 2001. He further opined that this was a work-related injury caused by the squatting and twisting and this injury was consistent with the functional requirements of her work. Dr. Neale released appellant to return to full-duty work on November 13, 2001.

By decision dated November 22, 2002, the hearing representative affirmed the May 11, 2001 decision, finding that the reports from Dr. Neale and Dr. Mercier were insufficient to meet appellant's burden of proof in establishing that she sustained a right knee condition causally related to the accepted December 22, 2000 employment incident. The hearing representative noted that as the employing establishment had authorized medical care for appellant for a period of up to 60 days, the Office was contractually obligated to pay for medical care provided by Immediate Health Care and Occupational Health Rehabilitation to February 26, 2001.

By letter dated April 4, 2003, appellant, through her attorney, requested reconsideration contending that the evidence was uncontroverted.

In a March 18, 2003 report, Dr. Neale advised that he reviewed the decision of the hearing representative dated November 22, 2002 and it was still his medical opinion that appellant's knee surgery was the direct result of the kneeling incident sustained on December 22, 2000. He stated that although she may have had some mild preexisting wear in her knee, appellant described to him a positive event that led her to seek medical attention. Although some of the symptoms improved with physical therapy, she was forced, because of continued pain, to undergo arthroscopic surgery on September 6, 2001. Findings at the time of surgery supported an increase in wear as a result of the injury suffered on December 22, 2000.

By decision dated June 23, 2003, the Office denied appellant's claim for reconsideration on the grounds that the March 18, 2003 report of Dr. Neale was repetitious or duplicative of evidence already in the case record.

The Board finds that the case is not in posture for a decision.

An employee seeking benefits under the Act<sup>1</sup> 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.<sup>2</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup> Appellant had established these requirements.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyett*, 41 ECAB 992 (1990).

However, to determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, 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>4</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>5</sup>

The Office has accepted that appellant experienced the employment incident at the time, place and in the manner alleged. She alleged that on December 22, 2000 she was kneeling down on her right knee processing a large package and was also leaning against the bumper of her jeep and developed knee pain. Therefore, the first element is satisfied.

The Board finds that the evidence from Dr. Mercier on causal relationship with the employment injury is speculative and without medical rationale and, therefore, is insufficient to establish appellant’s claim. He stated that appellant’s preexisting patellofemoral arthrosis “could be aggravated by the mechanism and work activity” she described. The Board notes that this comment is couched in speculative terms. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.<sup>6</sup> Medical opinions that are speculative and not supported by medical rationale are generally entitled to little probative value and are insufficient to meet appellant’s burden of proof.<sup>7</sup> Dr. Mercier failed to provide any medical rationale explaining how appellant’s patellofemoral symptoms were aggravated by her work activities of December 22, 2000. Thus, his opinion on causal relationship is of little probative value and is insufficient to establish appellant’s claim.

The Board finds, however, that the evidence from Dr. Neale is generally supportive of appellant’s claim and sufficient to require further development.

The record supports that after appellant initially saw her physician, Dr. Sampson on December 23, 2000 the employing establishment referred her to a contract medical facility, Immediate Health Care, where she underwent conservative treatment, including, physical therapy. She continued to experience symptoms with her right knee and was referred to Dr. Neale, who recommended and eventually performed an arthroscopic procedure. Medial and lateral tears and chondral abrasions bilateral condyle were diagnosed post surgery. Dr. Neale opined that the injury of December 22, 2000 necessitated the September 6, 2001 arthroscopy. He

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<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989). To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee’s statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant’s statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); *see also George W. Glavis*, 5 ECAB 363 (1953).

<sup>5</sup> *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(ee).

<sup>6</sup> *See Vaheh Mokhtarians*, 51 ECAB 190 (1999); *Thomas A. Faber*, 50 ECAB 566 (1999).

<sup>7</sup> *Carolyn F. Allen*, 47 ECAB 240 (1995).

listed objective changes in appellant's right knee attributable to the December 22, 2000 incident and his reports generally support causation or worsening of her right knee condition due to that incident. Although Dr. Neale reported a history of squatting and twisting, which the hearing representative had found to be inaccurate, it does not appear that a squatting motion is dissimilar to a kneeling motion, which was the motion upon which appellant originally noticed had caused her pain. The reports from Dr. Neale documents right knee changes which he attributed to the December 22, 2000 incident.<sup>8</sup> While his reports are insufficient to meet appellant's burden of proof, they raise an uncontroverted inference between the claimed incident and the resulting knee condition. The Board further notes that there is no evidence to the contrary.<sup>9</sup>

The case will be remanded to the Office for preparation of a statement of accepted facts and appropriate development of the medical evidence. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The June 23, 2003 and November 22, 2002 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case remanded for further proceedings consistent with this decision.

Dated, Washington, DC  
October 10, 2003

Alec J. Koromilas  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case for a second opinion evaluation.

<sup>9</sup> In light of the disposition of the first issue, the second issue is rendered moot.