

**United States Department of Labor
Employees' Compensation Appeals Board**

ZACKARY L. BAKER, Appellant

and

**U.S. POSTAL SERVICE, PATUXENT RIVER
POST OFFICE, Patuxent River, MD, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 04-1144
Issued: August 10, 2004**

Appearances:
Zackary L. Baker, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 24, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated January 20, 2004, denying his claim for a November 20, 2003 right knee injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained a right knee injury in the performance of duty on November 20, 2003.

FACTUAL HISTORY

On November 20, 2003 appellant, then a 45-year-old city carrier, filed a claim alleging that he sustained a right knee injury that day when he slipped on ceramic catalytic converter pellets. He stopped work that day.

In a November 20, 2003 report, J. Shaeffer, a physician's assistant, diagnosed a right knee sprain. In a November 20, 2003 slip, a nurse whose signature is illegible held appellant off

work through November 26, 2003. Appellant returned to full-time, light-duty work on December 2, 2003.¹

In a December 18, 2003 letter, the Office advised appellant of the type of additional medical evidence needed to establish his claim, including a report from his physician “supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury.” Appellant did not submit additional medical evidence prior to the issuance of the Office’s January 20, 2004 decision.

By decision dated January 20, 2004, the Office denied appellant’s claim on the grounds that causal relationship was not established. The Office found that appellant submitted sufficient evidence to establish that the claimed November 20, 2003 incident occurred at the time, place and in the manner alleged. However, the Office further found that appellant submitted insufficient medical evidence to establish a causal relationship between the November 20, 2003 incident and the claimed knee injury.

LEGAL PRECEDENT

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 filed within the applicable time limitation; 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether “fact of injury” has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁵ 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.⁶

¹ In a December 9, 2003 report, an Office medical management nurse noted that appellant had right knee arthroscopy in April 2003 for cartilage and ligament repair. The nurse did not indicate if the right knee arthroscopy was due to a prior occupational injury. No other claims are before the Board on appeal.

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *Deborah L. Beatty*, 54 ECAB ____ (Docket No. 02-2294, issued January 15, 2003).

ANALYSIS

Appellant claimed that on November 20, 2003 he injured his right knee when he slipped on ceramic pellets while in the performance of duty. The Office accepted that this incident occurred as alleged, thus finding that appellant had met the first component of this burden of proof by establishing the alleged injurious incident as factual. However, the Office also found that appellant failed to meet the second element of his burden of proof, as he submitted insufficient medical evidence to establish that the incident caused the claimed right knee injury.

In support of his claim, appellant submitted a November 20, 2003 report from a physician's assistant and an accompanying slip signed by a nurse. Neither of these documents appear to have been signed or reviewed by a physician. This lack of review is crucial to this claim as causal relationship is a medical question⁷ and neither a nurse nor a physician's assistant qualifies as a "physician" under the Act. A "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law and chiropractors only to the extent that their reimbursable services are limited to treatment of a subluxation as demonstrated by x-ray to exist.⁸ Lay individuals such as physician's assistants, nurses, nurse practitioners and physical therapists are not competent to render a medical opinion.⁹ Accordingly, the November 20, 2003 report and slip are of no probative value.

Thus, appellant has not established causal relationship as he has not submitted medical evidence in support of his claim. The Office provided appellant an opportunity to submit necessary medical evidence. However, no medical evidence addressing how the employment incident of November 20, 2003 caused or aggravated the claimed condition was received before issuance of the January 20, 2004 decision. Consequently, appellant has not met his burden of proof.

CONCLUSION

The Board finds that appellant has not established that he sustained a right knee injury in the performance of duty on November 20, 2003 as he did not submit medical evidence establishing causal relationship.¹⁰

⁷ *Id.*

⁸ 5 U.S.C. § 8101(2).

⁹ *See Robert J. Krstyen*, 44 ECAB 227, 229 (1992).

¹⁰ Following issuance of the January 20, 2004 decision, appellant submitted additional evidence. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant may submit such evidence to the Office accompanying a valid request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 20, 2004 is affirmed.

Issued: August 10, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member