

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

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**PAUL E. GLASS, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Akron, OH, Employer**

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**Docket No. 04-258  
Issued: March 25, 2004**

*Appearance:*

*Alan J. Shapiro, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman

DAVID S. GERSON, Alternate Member

MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On November 10, 2003 appellant, through counsel, filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated July 23 and October 21, 2003. 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 on appeal is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on June 11, 2002.

**FACTUAL HISTORY**

On June 19, 2002 appellant, then a 56-year-old letter box mechanic, filed a traumatic injury claim alleging that he sustained a work-related injury on June 11, 2002. He stated that "while getting up into my truck my [left] knee made a loud pop causing me severe pain." Appellant stopped work on June 12, 2002 initially returned to work on June 24, 2002 and then

worked intermittently until he underwent surgery on July 19, 2002. He returned to work following surgery on September 20, 2002.

In support of the claim, appellant submitted aftercare and disability notes from the Akron General Medical Center regarding emergency treatment for a strained joint on June 11, 2002. He also submitted an incomplete duty status report and a limited-duty job offer from the employing establishment dated June 24, 2002.

In a letter dated August 1, 2002, the Office requested that appellant submit additional medical evidence including a medical report containing a diagnosis of any condition resulting from the claimed injury in order to establish the claim.

In response, appellant submitted medical documentation from Dr. John Pinkowski, an attending Board-certified orthopedic surgeon. In a disability report dated July 16, 2002, the physician diagnosed medial meniscus tear of the left knee and indicated that appellant would be off work until after surgery.

By decision dated September 6, 2002, the Office denied appellant's claim on the grounds that the medical evidence did not provide a diagnosis or an opinion from a physician regarding how his injury was caused or aggravated by his federal employment.

In a letter dated October 2, 2002, appellant, through counsel, requested an oral hearing. He provided testimony at the hearing held on May 6, 2003.

By decision dated July 23, 2003, an Office hearing representative affirmed the September 6, 2002 decision denying appellant's claim for compensation. The hearing representative found that, while appellant's testimony was credible in establishing that he sustained the incident to his knee on June 11, 2002 as alleged, the medical evidence did not establish that his diagnosed torn medial meniscus was causally related to that incident.

In a letter dated August 26, 2003, appellant, through counsel, requested reconsideration of the July 23, 2003 decision and submitted an August 12, 2003 report from Dr. Pinkowski. He indicated that appellant was seen on June 17, 2002 with complaints of pain and discomfort in his left knee, primarily along the tibial joint medially with catching and popping. Appellant related to the physician that the pain began a couple months prior when he was moving a mailbox on a dolly which shifted and caused a jerking or twisting sensation to the left knee. Dr. Pinkowski stated that appellant's knee became sore after that injury and although his initial symptoms began to subside, they returned which prompted his visit. The stated:

"The mechanism of injury that [appellant] indicates and the amount of weight he was trying to contain in his job as a mailbox mechanic is a mechanism that is consistent with his current injury and I feel there's a causal relationship between the two."

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"I do believe that [appellant's] mechanism of injury likely aggravated his underlying chondral wear of the left knee, which caused mechanical symptoms of an incapacitating nature. He failed to have these symptoms prior to the injury.

[Appellant] had still the gradual improvement with medical treatment, including arthroscopy....

“My opinion would be that [appellant] had an aggravation of some mild to moderate preexisting articular cartilage wear to the left knee due to the mechanism of injury that he initially described to me, which he indicated happened at work.”

By decision dated October 21, 2003, the Office found that the history of injury provided by Dr. Pinkowski was inconsistent with that claimed by appellant on the CA-1 form and, therefore, the physician’s opinion was based on an inaccurate history of injury. The Office determined that the evidence submitted with the reconsideration request was insufficient to warrant modification of the July 23, 2003 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim,<sup>2</sup> including the fact that the individual is an “employee of the United States” within the meaning of the Act,<sup>3</sup> that the claim was timely filed within the applicable limitation period of the Act,<sup>4</sup> that an injury was sustained in the performance of duty as alleged and that any disability or condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These elements must be established regardless of whether the claim is for a traumatic injury or an occupational disease.<sup>6</sup>

To determine whether an 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>7</sup> Second, the employee must submit sufficient evidence, generally in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup> An employee may establish that an injury

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<sup>1</sup>5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Irene St. John*, 50 ECAB 521, 522 (1999).

<sup>3</sup> See *Barbara L. Riggs*, 50 ECAB 133, 137 (1998).

<sup>4</sup> *Albert K. Tsutsui*, 44 ECAB 1004, 1007 (1993).

<sup>5</sup> *David M. Ibarra*, 48 ECAB 218 (1996); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> See *Ruth Seuell*, 48 ECAB 188, 192 (1996).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *Id.*

occurred in the performance of duty as alleged, but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.<sup>9</sup>

### ANALYSIS

In this case, appellant alleged that he injured his left knee when he was getting up into his truck at work on June 11, 2002. The Office initially accepted that the June 11, 2002 incident occurred at the time, place and in the manner alleged. However, it found that appellant had not established a causal relationship between the employment incident and the diagnosed left knee meniscus tear reported by Dr. Pinkowski. Appellant requested reconsideration and submitted an August 12, 2003 report from Dr. Pinkowski, who provided an opinion regarding the cause of appellant's condition. The Board finds that Dr. Pinkowski's reports are insufficient to establish the claim. With respect to causal relationship, a medical opinion must be based on an accurate and complete background or its probative value is diminished. It is well established that medical reports must be based on a complete and accurate factual and medical background and medical opinions based on an incomplete or inaccurate history are of little probative value.<sup>10</sup> The medical evidence in this case provides the diagnosis that appellant sustained a medial meniscus tear of the left knee and underwent surgery for his condition. Dr. Pinkowski stated in an August 12, 2003 report, that appellant's left knee injury was sustained at work "when he was moving a mailbox on a dolly which shifted and caused a jerking or twisting sensation to that knee." He found a causal relationship between appellant's current condition and the amount of weight appellant was trying to contain in his job as a mailbox mechanic. Although appellant identified the date of injury as June 11, 2002, Dr. Pinkowski noted that, when seen on June 17, 2002, appellant reported a history of pain which occurred several months prior while moving a mail dolly. This finding does not support that the incident occurred on June 11, 2002 as alleged. Since Dr. Pinkowski appears to have based his opinion on an inaccurate history, the Board finds that his report is of diminished probative value on the issue of causal relationship.<sup>11</sup> Based on the evidence of record, appellant has not met his burden of proof to establish a left knee condition as causally related to his federal employment.

### CONCLUSION

The Board finds that appellant has not established that he sustained a left knee condition on June 11, 2002 causally related to factors of his federal employment.

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<sup>9</sup> As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. *Frazier V. Nichol*, 37 ECAB 528 (1986).

<sup>10</sup> See *Patricia M. Mitchell*, 48 ECAB 371 (1997); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

<sup>11</sup> See *Earl David Seal*, 49 ECAB 152, 155 (1997) (finding that medical opinions based on an inaccurate history provided by appellant are insufficient to establish causal relationship).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 21 and July 23, 2003 are affirmed.

Issued: March 25, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member