



replacement was performed because the bone in his hip had been fractured from bone deterioration.

Appellant was treated at the emergency room at Memorial Medical Center in Las Cruces, New Mexico on September 29, 2004, complaining of severe hip pain in an area where he had surgery several years prior, and noted the onset of pain over the past three days. Appellant was transferred to Mount View Regional Medical Center where, on September 30, 2004, Dr. Donald Watson, a Board-certified orthopedic surgeon, performed a hemiarthroplasty right hip. Appellant had physical therapy and regained his ability to ambulate. On October 4, 2004 Dr. Watson found that appellant was stable enough to use crutches and travel. He released appellant who flew back to his home in Maryland the following day. On December 28, 2004 Dr. A. Mrowiec, a Board-certified family practitioner, released appellant to return to work.

By letter dated February 22, 2005, the Office requested that appellant submit further information as the evidence was insufficient to establish fact of injury. Appellant was allotted 30 days to submit the requested information. Nothing further was submitted.

By decision dated March 23, 2005, the Office denied appellant's claim, finding that he did not sustain an injury in the performance of duty.

### **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, including the fact that an 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 the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>2</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.<sup>3</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>4</sup>

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Juanita Pitts*, 56 ECAB \_\_\_\_ (Docket No. 04-1527, issued October 28, 2004).

<sup>3</sup> *John J. Carlone*, 41 ECAB 3545 (1989); *see* 5 U.S.C. § 8101(5).

<sup>4</sup> *Shirley A. Temple*, 48 ECAB 404 (1997).

specific employment incident or to specific conditions of employment.<sup>5</sup> An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.<sup>6</sup> The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>7</sup> Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.

### ANALYSIS

Appellant never provided a description as to any incident on September 29, 2004 that allegedly caused his injury. He gave no detailed account of any incident and stated no apparent cause for injury. Appellant presented no medical evidence regarding the specific mechanism of injury, as required in a claim for traumatic injury, nor did he allege that he experienced a specific event, incident or exposure at a definite time, place and manner.<sup>8</sup> He indicated that, while driving, he experienced numbness and then right hip pain. Appellant did not list any factor of his employment that could have caused the injury. Accordingly, as he has not established that an incident occurred in the performance of duty on September 29, 2004, as alleged. Appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty, and it is not necessary to discuss the probative value of the medical reports.<sup>9</sup>

The Board finds that appellant has failed to establish the fact of injury: he did not submit sufficient evidence to establish that he actually experienced an employment incident at the time, place and in the manner alleged.<sup>10</sup>

### CONCLUSION

Appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty on September 29, 2004.

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<sup>5</sup> *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>6</sup> *John D. Jackson*, 55 ECAB \_\_\_\_ (Docket No. 03-2281, issued April 8, 2004); *William Nimitz, Jr.*, 30 ECAB 567 (1979).

<sup>7</sup> *Nicollette R. Kelstrom*, 54 ECAB \_\_\_\_ (Docket No. 03-275, issued May 14, 2003).

<sup>8</sup> *See Betty J. Smith*, 54 ECAB \_\_\_\_ (Docket No. 02-149, issued October 29, 2002).

<sup>9</sup> *See Tracey P. Spillane*, 54 ECAB \_\_\_\_ (Docket No. 02-2190, issued June 12, 2003).

<sup>10</sup> An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q). To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit, *inter alia*, a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition. *Solomon Polen*, 51 ECAB 341, 343-44 (2000). Appellant clearly filed a claim for a traumatic injury. However, even if this were considered under the criteria for occupational disease as there is some evidence in the record that the pain had been developing over a period of days, appellant still has not provided any statement identifying the factors alleged to have caused the medical condition. Accordingly, even if this claim was considered as an occupational disease claim, appellant has not satisfied his burden of proof.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 23, 2005 is hereby affirmed.

Issued: December 13, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board