

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

FREDERICK L. MORRIS, Appellant

and

**DEPARTMENT OF DEFENSE, PRODUCE
BUYING OFFICE, Avon, MA, Employer**

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**Docket No. 05-405
Issued: May 13, 2005**

Appearances:
Frederick L. Morris, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 6, 2004 appellant filed a timely appeal from the November 23, 2004 merit decision of the Office of Workers' Compensation Programs which denied his claim for compensation for failure to establish fact of injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the Office's decision.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on June 17, 2004, as alleged.

FACTUAL HISTORY

On September 15, 2004 appellant, then a 47-year-old supply systems analyst, filed a claim alleging that he sustained injuries in the performance of duty on June 17, July 28 and August 3, 2004: "Injury occurred June 4 [and] 17 [and] July 4 [and] 28 and Aug[ust] 3 [and] 04 [, 2004] at the above location. Cause workstation desk support sticks out under table top, when individual turned, banged knee, you can not see support." Appellant described the nature of his

injury as follows: “Knee -- left banged/smashed into support. Cheryl Wilcox was in, I told her what happened but she was not in the room.” On the back of the claim form, a supervisory commodities logistics specialist stated that appellant never informed his supervisor that he had sustained an injury or bumped his leg. The supervisor added: “No other employees were aware that he had injured his leg. Employee has resigned from this agency effective August 7, 2004.” An unsigned and undated statement was attached:

“[Appellant] never notified the supervisor or any coworkers that he had hurt his leg. There were no witnesses to any incidents. A coworker stated that on one occasion [appellant] said in passing that he banged his leg on the desk support. He did not state that he was in pain[,] nor did he request to leave work to go to the doctor’s office. [Appellant] did not request to submit an accident report at any time. [He] resigned from the [a]gency effective August 7, 2004, so it is impossible to ascertain if his leg had sustained an injury after any of these incidents. The accident report was received on September 15, 2004.”

On October 5, 2004 the Office advised appellant that the evidence received was insufficient to support his claim because it failed to establish that he actually experienced the incident or employment factor alleged to have caused injury, because no diagnosis of any condition resulting from his June 17, 2004 injury was provided and because no physician’s opinion on how his injury resulted in a diagnosed condition was submitted. The Office explained that he had to file a separate claim for each traumatic injury indicated and that the current claim was being processed for an injury occurring on June 17, 2004.¹ The Office asked appellant to respond to a list of questions and to submit a detailed narrative report from his physician indicating, among other things, whether the claimed incident caused or aggravated a diagnosed condition.

Appellant responded on October 7, 2004. Asked why he did not report his injury to his supervisor within 30 days, he stated: “Each injury was reported to the office manager on the day it happened. I was never informed by anyone that it had to be in writing. Each injury was reported on the date of injury.” As to the immediate effects of the injury and what he did immediately thereafter, he explained: “On the date of this injury I noted pain, a red mark where I banged my knee on the support. I informed [the] office manager and moved trash can in front of support in an effort to prevent future injury.” In addressing his delay in seeking medical attention, appellant stated: “On this date I banged my left knee, there was no blood and no cut that I could see. Didn’t believe doctor was required. On August 3 [and] 04 [,2004] I banged right knee for which doctor was later required.” Appellant stated that he had no similar disability or symptoms to his knowledge. He indicated that he had no detailed narrative report from his doctor because he did not see a doctor for the June 17, 2004 injury.

Appellant submitted a September 1, 2004 drawing of his workstation which showed the location of the supports under his work counter. He stated: “I informed coworker and office

¹ Following the Office’s instructions, appellant filed separate claims for injuries on July 28 and August 3, 2004. Those two case files, OWCP File Nos. 012028401 and 012028402, are presently before the Board under Docket No. 05-460. The current appeal is limited to appellant’s claim that he sustained an injury in the performance of duty on June 17, 2004.

manager when I banged my knee on these supports. The supports which are under the counter can not be seen when seated at the workstation.”

Appellant also responded to the unsigned and undated statement attached to his claim form:

“The above, unsigned and undated statement, identified by [tele]phone number ... is untrue and misleading. I notified the office manager, [Ms.] Wilcox, the day of each injury, it wasn't until after the August 3 [,2004] injury that a doctor was required. The office manager informed the agency that she 'was' aware of the injury and provided a statement to the agency stating as much.

“I informed the office manager of each injury on the date of the injury, there were witnesses, a coworker in the office, and I did show both the coworker in the office and the office manager how, and where I banged my knee. I even pointed out to my coworker and the office manager, the support beam under the desk/counter top where I banged my knees. I most certainly did state that I was in pain, but did not believe at the time that a doctor was required, there wasn't any blood and there didn't appear to be a cut, the area was red and blue from where it was banged.

“The unsigned statement above, continues that I resigned from the agency, this statement is also, untrue. I transferred to another agency, to the Dep[ar]t[ment]. Of [the] Army, going from a GS-7 to GS-12, there was no break in service, I did not resign.

“Further, the last injury occurred August 3, 2004, the office manager was informed, coworkers and I spoke about it, as I recall, I stated to my coworkers to put up a sign for the next guy to watch out for the support. Further, I informed the office manager at the end of August that I was having problems with my knee and that I needed to see a doctor. I did go to the emergency room September 2004 and informed the office manager of that visit.

“No one, informed me and no one informed the office manager that I needed to report these events in writing, no one informed me or the office manager, Ms. Wilcox that I need to fill out a form for each event.

“I do not know the individual who wrote the above unsigned statement ..., this individual has never spoken to me about the injuries, they failed to provide me with any information, they failed to inform me what documentation I required and they misrepresent me and the facts of these events.”

The record shows that appellant obtained medical attention in September 2004 for an injury to his right knee on August 3, 2004. There is no medical report relating to a left knee injury on June 17, 2004.

On October 22, 2004 the supervisor who completed the back of appellant's claim form offered the following statement:

“[Appellant's] tenure with the Defense Supply Center Philadelphia (DSCP), duty station Avon, MA[,] initiated on June 14, 2004 and ended on August 6, 2004 when [he] resigned from the DSCP, PBO Avon, MA to transfer to a position at the Department of the Army. During this time period, there was no verbal or written notification to the undersigned that [he] had banged or injured his knee during this eight[-]week period. The first time that this situation came to light was on September 15, 2004 when I was notified in the PBO Avon, MA office. I spoke with [Ms.] Wilcox, who [appellant] claims he reported the accident to and she stated to me that she does not remember [his] banging his leg on three occasions. On only one occasion Ms. Wilcox recalls [him] stating that he just banged his leg, however, it was interpreted as a passing comment and lacked the urgency that an injury had occurred. Ms. Wilcox stated that she was not in the room and was not an eye witness to the incident, nor did she ever visually see [appellant's] knee. [He] did not leave the workplace on any occasion to go to the doctors, nor did he report that he sought medical assistance following any incident. The sick leave on record utilized by [appellant] is eight hours sick leave on July 2, 2004, for a food poisoning incident and July 27, 2004 for unexplained reasons. [He] states that he informed the office manager at the end of August that he was having problems with his knee and needed to see a doctor. This was not an employee of DSCP, who was notified of this as [appellant] left employment at PBO Avon, MA, on August 5, 2004. These are the facts that I know of them, to the best of my knowledge.”

In a decision dated November 23, 2004, the Office denied appellant's claim on the grounds that the evidence submitted was insufficient to establish that the June 17, 2004 incident occurred as alleged. The Office found that the factual history provided was inconsistent: “You state you injured your left knee on the workstation desk supports; your employing [establishment] state [that] they were unaware of the incident until you completed the Form CA-1 on September 15, 2004, 3 months subsequent to the alleged incident.” The Office also noted that appellant provided no medical opinion relative to a left knee injury or relating a history of a work-related incident on June 17, 2004.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish

² 5 U.S.C. §§ 8101-8193.

that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.³

Causal relationship is a medical issue⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty⁶ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁷

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.⁸ An employee's statement that an injury occurred at a given time and in a given manner is of great probative value, however; and will stand unless refuted by strong or persuasive evidence.⁹

ANALYSIS

Appellant claimed that he banged his left knee on a support below the counter of his workstation on June 17, 2004 and there is no strong or persuasive evidence to the contrary. The drawing he submitted of his workstation described how he struck his knee against the desk support. Appellant asserted that he immediately informed the office manager, Ms. Wilcox, and there is no reason to doubt this, even if he did not inform the supervisory commodities logistics specialist. She remembered that he once stated having banged his leg, which supports that he informed her of the incident, though her recollection was not specific and did not fix the incident

³ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ See *William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984). See also *George W. Glavis*, 5 ECAB 363 (1953).

⁹ *Virgil F. Clark*, 40 ECAB 575 (1989); *Robert A. Gregory*, 40 ECAB 478 (1989).

as to time.¹⁰ That she did not recall three such incidents is not a refutation. There were no witnesses or at least no witness statement submitted, is not an inconsistency. The fact that appellant did not seek medical attention after the June 17, 2004 incident does not mean the incident did not occur as alleged. His inaction bears on whether the incident caused a physical condition or injury calling for professional medical attention.

The Board finds that the evidence is sufficient to establish that appellant struck his left knee on a support below the counter of his workstation on June 17, 2004. He has established that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The question that remains is whether this June 17, 2004 incident caused an injury.

On October 5, 2004 the Office asked appellant to submit a detailed narrative report from his physician indicating whether the claimed incident caused or aggravated a diagnosed condition. However, he did not seek immediate medical attention for his left knee after the June 17, 2004 incident. Appellant explained that there was no obvious injury, no blood or cut that he could see and so he did not believe treatment by a doctor was necessary. While this explains the reason appellant did not see a physician, it leaves the Office no basis for accepting that he sustained any specific injury as a result of the June 17, 2004 incident. Without a diagnosed left knee condition and a physician's opinion explaining how the June 17, 2004 incident caused such a medical condition, appellant has not met his burden of proof to establish the essential element of causal relationship. He has not established fact of injury. On this basis the Board will affirm the Office's November 23, 2004 decision to deny appellant's claim for compensation benefits.

CONCLUSION

The Board finds that appellant struck his left knee on a support below the counter of his work station on June 17, 2004, as alleged. However, there is no medical evidence to support a left knee injury. He has not met his burden of proof.

¹⁰ Appellant did not explain how he was able to remember the date of the incident three months after the fact, but neither did the Office ask.

ORDER

IT IS HEREBY ORDERED THAT the November 23, 2004 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: May 13, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member