

On May 30, 2003 appellant's supervisor submitted a statement regarding appellant's claim for an alleged May 23, 2003 work-related injury.¹ The supervisor stated that appellant initially reported an injury on May 27, 2003, and further noted that appellant had complained about intermittent knee pain for several years. The supervisor advised appellant on that day, May 27, 2003, that he should seek medical treatment to avoid an aggravation of his condition. He also advised appellant that, if he were reporting a work-related accident on May 27, 2003 that occurred on May 23, 2003, he should have reported it during his tour of duty and that his claim was untimely. The supervisor indicated that appellant replied that his knee had not bothered him until the last several days and that he wanted the supervisor to forget about the incident and declined the offer for medical treatment.

In a prescription slip dated May 30, 2003, Dr. Royce Fagan, appellant's internist, placed him on total disability from May 30 to June 4, 2003.

By letter dated June 12, 2003, the Office advised appellant of what evidence he needed to establish his claim.

In an attending physician's report dated May 30, 2003, Dr. Fagan noted by checking a box "yes" that appellant's left knee sprain was work related and that he was unable to work as a result of the injury.

In a treatment note dated May 30, 2003, Dr. Fagan stated that appellant reported that he had a work-related left knee injury sustained a week prior and that his pain had increased with work-related activities. He diagnosed left knee pain, bursitis and meniscus collateral ligament sprain. He placed appellant on total disability from May 30 to June 6, 2003.

On June 6, 2003 Dr. Fagan extended appellant's total disability to June 20, 2003 and referred him for an orthopedic evaluation. On June 20, 2003 Dr. Fagan extended appellant's total disability to July 10, 2003. A July 1, 2003 magnetic resonance imaging scan of the left knee revealed degenerative fraying and tears involving the posterior horn of the medial meniscus.

By decision dated July 17, 2003, the Office denied appellant's claim based on his failure to establish fact of injury.

On August 19, 2003 Dr. Stephen R. Matz, a Board-certified orthopedic surgeon, performed an arthroscopic partial medial meniscectomy and chondroplasty of the left knee.

On October 10, 2003 appellant requested reconsideration. In an October 10, 2003 narrative, appellant stated that he advised his supervisor on May 23, 2003 that he sustained an injury, but also advised him that he would be alright. Appellant explained that he did not report the May 23, 2003 injury as work related because he was concerned that he would be harassed

¹ The supervisor stated that appellant's May 30, 2003 claim was submitted seven days after the alleged incident which would be May 23, 2003.

and would be subject to having his tour of duty changed. However, his knee did not improve, compelling him to report the injury to his supervisor on May 30, 2003 to seek medical treatment.

With his request, appellant submitted a July 13, 1993 report from Dr. Matz who noted a right knee surgery, right knee cruciate ligament reconstruction, four months prior based on an August 7, 1991 injury. On August 19, 2003 Dr. Matz performed left knee arthroscopic surgery and placed appellant on total disability. On October 9, 2003 Dr. Matz released appellant to return to full duty on October 13, 2003.

In a letter dated November 20, 2003, the Office advised appellant to clarify to whom he reported his injury on May 30, 2003. In a November 24, 2003 letter, appellant's supervisor stated that appellant reported on May 23, 2003 that his "left knee was sore and sometimes it swells up," but was unable to recall when he hurt his knee and declined to report the condition as an accident or pursue medical care. The supervisor then noted that on May 30, 2003 appellant reported that on May 23, 2003 he sustained a work-related injury while stepping out of a truck. Appellant was then referred to the compensation office. In a December 5, 2003 letter, the supervisor again noted that appellant related a sore knee on May 23, 2003 but did not relate how any incident occurred.

In a decision dated January 15, 2004, the Office denied modification of its July 17, 2003 decision. The Office found that the evidence did not establish that the claimed incident occurred as alleged.²

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing that he or she sustained an injury while in the performance of duty.⁴ In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. An employee has the burden of establishing the occurrence of the injury at the time, place and in the manner alleged by a preponderance of the reliable, probative and substantial evidence.⁵ An injury does not have to be confirmed by an eyewitness in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with the

² Appellant filed an appeal to the Board and requested an oral argument that was scheduled for November 17, 2005. Appellant did not appear for the scheduled oral argument.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁵ *Charles B. Ward*, 38 ECAB 667 (1987).

surrounding facts and circumstances and his or her subsequent course of action. Such circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she has established a *prima facie* case.⁶ However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁷

The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁸ As part of the burden, the claimant must present rationalized medical evidence based on a complete factual and medical background showing causal relationship.⁹

ANALYSIS

The Office found in its July 17, 2003 and January 15, 2004 decisions that the evidence did not support that the claimed May 23, 2003 incident occurred in the manner alleged. The factual evidence, however, establishes that the incident occurred as alleged by appellant on May 23, 2003 when he slipped exiting a truck.

The record shows that appellant reported a May 23, 2003 knee condition on that day to his supervisor based on his uncontroverted statement and his supervisor's statements dated November 24 and December 3, 2003. Appellant explained that he declined at that time to report it as a work-related injury as he was concerned this would affect his job and shift assignments. He continued to work for the next several days, but the pain remained, so on May 30, 2003, he reported the incident as a work-related injury and sought medical treatment. The factual histories contained in the medical reports of record are generally consistent regarding how and when the incident occurred. Appellant's statements to the Office regarding how the incident occurred are also consistent. There is no strong or persuasive evidence refuting that the incident occurred. The Board finds that the evidence establishes that appellant slipped while exiting his truck on May 23, 2003 as alleged.

Regarding the second component of fact of injury, whether the accepted incident caused a left knee injury, the Board finds that the medical evidence is insufficient to establish that the May 23, 2003 incident caused or aggravated a left knee condition.

Medical evidence from Drs. Fagan and Matz relate the history of injury, diagnose left knee conditions but do not provide medical rationale explaining how and why the May 23, 2003

⁶ *Merton J. Sills*, 39 ECAB 572, 575 (1988).

⁷ *Thelma S. Buffington*, 34 ECAB 104 (1982).

⁸ *See John J. Carlone*, 41 ECAB 354 (1989).

⁹ *Joseph T. Gulla*, 36 ECAB 516 (1985).

incident caused or aggravated a left knee condition.¹⁰ While Dr. Fagan submitted several form reports in which he checked a box “yes” to indicate that appellant’s condition was employment related, these reports are insufficient as the doctor did not provide any medical reasoning to support his opinion.¹¹ Furthermore, to the extent that Dr. Fagan’s narrative reports address causal relationship, such as his May 30, 2003 report, they do so in recounting appellant’s history. Dr. Fagan’s narrative reports do not contain a specific statement or discussion by Dr. Fagan addressing why it is his medical opinion that the May 23, 2003 incident caused or aggravated a left knee condition. The physician’s specific and reasoned opinion on causal relationship is particularly important in a case such as this where diagnostic testing suggests that appellant had degenerative changes in his left knee at the time of the May 23, 2003 incident.

Likewise, the reports of Dr. Matz are insufficient to establish causal relationship as the physician either does not specifically address causal relationship or, as in his June 26, 2003 report, only addresses it in relating appellant’s history. He did not provide a specific and reasoned opinion on the cause of appellant’s left knee condition. Neither Dr. Fagan nor Dr. Matz provided a reasoned opinion explaining how the May 23, 2003 incident caused or aggravated a left knee condition.

Reports of record from other physicians do not specifically address whether the May 23, 2003 work incident caused or aggravated a left knee condition.

Consequently, the Board finds that appellant did not meet his burden of proof as the medical evidence is insufficient to establish that the May 23, 2003 employment incident caused or aggravated a left knee condition.

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a left knee injury in the performance of duty on May 23, 2003.

¹⁰ A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship that is unsupported by medical rationale. *Robert S. Winchester*, 54 ECAB 191 (2002).

¹¹ The Board has held that an opinion on causal relationship which consists only of a physician checking “yes” on a medical form report without further explanation or rationale is of little probative value. *Alberta S. Williamson*, 47 ECAB 569 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 15, 2004 and July 17, 2003 are affirmed as modified.

Issued: January 24, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board