

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

PATRICIA A. RAMIREZ, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Los Angeles, CA, Employer**

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**Docket No. 06-943
Issued: July 14, 2006**

Appearances:
Patricia A. Ramirez, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 13, 2006 appellant timely appealed decisions of the Office of Workers' Compensation Programs dated July 20, 2005, denying her request for reconsideration and June 1, 2005, denying her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty on November 1, 2004 as alleged; and (2) whether the Office properly refused to reopen her claim for further merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 18, 2005 appellant, then a 51-year-old mail processor, filed a traumatic injury claim alleging that on November 1, 2004 she slipped and fell on a waxed floor while in the performance of her federal duties. She alleged that she had injured the inner part of her right knee. The employing establishment controverted the claim.

In an April 18, 2005 statement, appellant explained that she did not immediately report the injury as she felt the pain would go away. She saw her physician on February 28, 2005 and was told that she had pulled a ligament, but noted that her right knee pain had increased. Appellant submitted an April 11, 2005 Documentation of Medical Impairment in which a Dr. Taylor from Kaiser Permanente diagnosed a knee strain for which she was totally disabled for the period April 11 to 14, 2005 and could work with restrictions for 30 days thereafter.

By letter dated May 2, 2005, the Office advised appellant that additional factual and medical evidence was needed. It explained that a physician's opinion on causal relationship was crucial to her claim and allotted her 30 days to submit the requested information.

In an undated statement, appellant described the event leading to her injury as occurring around November 2004 and stated that, although she had felt a twinge in her inner knee, it did not bother her until "a week or so later." She explained that she was on permanent limited light duty and believed as long as she was sitting she would be okay. Appellant explained that, after she saw her physician at Kaiser Permanente on February 25, 2005, she decided to file a claim. She indicated that, although she had some witnesses, she did not know whether they would admit to the injury.

The Office received a May 17, 2005 record from orthopedics and a May 3, 2005 report in which a physician at Kaiser Permanente diagnosed a knee strain with symptoms noted to have begun November 1, 2004. Appellant was placed on restrictions for 21 days starting May 13, 2005.¹

By decision dated June 1, 2005, the Office denied appellant's claim for a right knee injury, finding that there was insufficient medical evidence to establish that her claimed medical condition was related to the November 1, 2004 incident.

On June 3, 2005 appellant requested reconsideration. She indicated that she had a medical appointment on June 30, 2005 so that her physician could evaluate her and provide a complete report. In a June 17, 2005 letter, the Office advised appellant to submit a well-rationalized medical report from her physician.

In a May 26, 2005 report, Dr. Delaney Smith, an internist, noted that appellant complained of pain and swelling in the right knee since November 1, 2004. Examination findings were provided and she was released to modified duty with restrictions from May 26 through June 23, 2005. In a June 2, 2005 report, Dr. Smith noted that appellant's status had improved. He noted that a magnetic resonance imaging (MRI) scan was pending and no fractures were seen on x-ray. Dr. Smith advised that appellant was temporarily totally disabled from June 2 to 3, 2005, but could return to modified duty with restrictions on June 4 through July 3, 2005.

¹ The physician's signature is illegible.

By decision dated July 20, 2005, the Office denied reconsideration, finding that the evidence submitted was irrelevant and insufficient to warrant further merit review.²

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 timely filed within the applicable time limitation period of the Act⁴ and that an injury was sustained in the performance of duty.⁵ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To determine whether a federal 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.⁷ 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.⁸ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁹

ANALYSIS -- ISSUE 1

Appellant claimed that she sustained a right knee injury as a result of a slip and fall on a waxed floor on November 1, 2004 while in the performance of duty. The Office accepted that the work incident occurred as alleged.¹⁰

² The Board notes that the record on appeal contains evidence which the Office received after its July 20, 2005 decision denying reconsideration. The Board lacks jurisdiction to review this evidence for the first time on appeal. 5 U.S.C. § 501.2(c). This, however, does not preclude appellant from having such evidence considered by the Office as part of a reconsideration request before the Office.

³ 5 U.S.C §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *James E. Chadden Sr.*, 40 ECAB 312 (1988).

⁶ *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *Linda S. Jackson*, 49 ECAB 486 (1998), *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *Id.*

⁹ *Lourdes Harris*, 45 ECAB 545 (1994).

¹⁰ See *Gregory J. Reser*, 57 ECAB ____ (Docket No. 05-1674, issued December 15, 2005) (the Board notes that an employee's statement regarding the occurrence of an employment incident will stand unless refuted by strong or persuasive evidence).

The Board finds that the medical evidence is insufficient to establish that the November 1, 2004 incident caused an injury. The medical reports of record do not provide a reasoned explanation of how the incident of November 1, 2004 caused or aggravated appellant's right knee condition.¹¹

Appellant initially submitted an April 11, 2005 report in which a Dr. Taylor diagnosed a knee strain and advised of her disability for work. However, he did not provide any explanation on what caused or contributed to her knee condition or when her symptoms began. Dr. Taylor did not provide any history of the November 1, 2004 incident. As this report fails to provide the necessary supportive medical evidence, it is insufficient to meet appellant's burden of proof in establishing a knee injury due to the accepted incident.

On May 3, 2005 a physician with Kaiser Permanente diagnosed a knee strain and advised of appellant's disability for work. Although the physician noted that her symptoms began November 1, 2004, no opinion was provided on the issue of causal relationship or how appellant's disability was related to the November 1, 2004 incident. Again, the medical records did not reflect a history of the slip and fall incident or explain how the incident caused or contributed to appellant's condition in May 2003. This report is insufficient to meet her burden of proof.¹²

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹³

LEGAL PRECEDENT -- ISSUE 2

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).¹⁴ The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.¹⁵ Section 10.608(b) provides that, when a request for reconsideration

¹¹ See *Roy L. Humphrey*, 57 ECAB ____ (Docket No. 05-1928, issued November 23, 2005). (Causal relationship must be substantiated by reasoned medical opinion evidence).

¹² *Id.*

¹³ *Id.*; *Charles E. Evans*, 48 ECAB 692 (1997).

¹⁴ 20 C.F.R. § 10.608(a) (1999).

¹⁵ 20 C.F.R. § 10.606(b)(1)-(2).

is timely, but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.¹⁶

ANALYSIS- ISSUE 2

In her June 3, 2005 reconsideration request, appellant did not show that the Office erroneously applied or interpreted a specific point of law; or advance a relevant legal argument not previously considered by the Office. She submitted evidence not previously of record. In a May 26, 2005 report, Dr. Smith noted appellant's complaint of right knee pain and swelling since November 1, 2004, diagnosed a right knee condition and advised as to her disability status. On June 2, 2005 he provided an update on appellant's status. The reports of Dr. Smith do not provide any discussion of how appellant's right knee condition was caused or contributed to by the November 1, 2004 incident. This evidence is not relevant with respect to the underlying issue of whether she has established that the incident of November 1, 2004 caused or aggravated her right knee condition. Therefore, this evidence was insufficient to require further merit review.

As appellant did not show that the Office erroneously applied or interpreted a specific point of law; advance a relevant legal argument not previously considered by the Office; or constitutes relevant and pertinent evidence not previously considered by the Office, the Office properly denied her request for reconsideration.

CONCLUSION

The Board finds that appellant has failed to submit the necessary medical opinion evidence to establish a causal relationship between her alleged employment incident on November 1, 2004 and her currently diagnosed knee condition. The Board further finds that the Office properly refused to reopen her claim for merit review under 5 U.S.C. § 8128(a).

¹⁶ 20 C.F.R. § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated July 20 and June 1, 2005 are affirmed.

Issued: July 14, 2006
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