



2003 and May 28, 2004 Office decisions finding that, while appellant established as factual that he installed the floor patches on March 20, 2003, he did not submit sufficient medical evidence to establish that he sustained a resulting right knee injury. The Board further found that the Office properly adjudicated appellant's claim as one for a new traumatic injury. The law and the facts of the case as set forth in the Board's prior decision and order are hereby incorporated by reference.

During the pendency of the prior appeal, appellant submitted chart notes from Dr. David V. DiMarco, an attending orthopedic surgeon. In a June 25, 2004 chart note, Dr. DiMarco diagnosed internal derangement of the right knee with recent instances of buckling. On examination, Dr. DiMarco found synovitis and a possibly positive grind test. He found appellant totally disabled from his date-of-injury position. In August 27 and November 12, 2004 chart notes, Dr. DiMarco noted continued instability in the right knee with synovitis and increasing pain. He requested that the Office authorize physical therapy and viscosupplementation injections.

Following issuance of the Board's November 30, 2004 decision, appellant requested reconsideration in a May 23, 2005 letter. Appellant, through his attorney, asserted that it was irrelevant whether appellant sustained a new injury or a recurrence of disability as he was totally disabled in either case. He also asserted that the Office should have developed the medical record but failed to do so. Appellant submitted additional evidence.

In a March 24, 2005 report, Dr. DiMarco opined that appellant sustained a "reinjury of his right knee" on March 20, 2000,<sup>2</sup> an "acute exacerbation of his ongoing pathology related to" the accepted February 20, 2000 injury. He explained that appellant's "disabling ongoing symptoms [were] caus[ally] related to the date of injury February 20, 2000.... [Appellant] ha[d] traumatic arthritis to the right knee and the return of these symptoms and acute flare-ups should be considered acute exacerbation of progressive degeneration consistent with pathomechanics of maybe with traumatic arthritis [sic]." Dr. DiMarco stated that, if the Office would not authorize viscosupplementation injections, appellant "should be considered to have reached maximum medical improvement" and remained totally disabled from his date-of-injury position.

By decision dated August 10, 2005, the Office denied modification of the prior decisions. The Office found that appellant's legal contentions were either irrelevant or repetitious of those made prior to the first appeal. The Office further found that Dr. DiMarco's reports were insufficiently rationalized to establish that appellant sustained a new right knee injury on March 20, 2003. The Office noted that Dr. DiMarco failed to provide a complete history of injury in his reports, did not describe appellant's duties on March 20, 2003 or explain how and why those duties would cause a right knee injury.

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<sup>2</sup> The actual date in the report is March 28, 2003, not March 20, 2003. The Office noted this discrepancy as a typographical error.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> 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 filed within the applicable time limitation; that an injury was sustained while 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.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>5</sup>

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.<sup>6</sup> 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.<sup>7</sup>

## ANALYSIS

The Office accepted as factual that, on March 20, 2003, appellant installed aircraft floor patches, knelt and climbed stairs. It must then be determined if those job duties caused the claimed right knee injury.

Appellant submitted reports from Dr. DiMarco, an attending orthopedic surgeon. In June 25, August 27 and November 12, 2004 chart notes, he observed synovitis and instability in appellant's right knee but did not attribute these signs to the March 20, 2003 work factors. On March 24, 2005 Dr. DiMarco opined that, on March 20, 2003, appellant reinjured his right knee and thereby exacerbated the ongoing, disabling pathology and traumatic arthritis caused by the accepted February 20, 2000 meniscal tear. However, Dr. DiMarco did not address any of appellant's job duties. The lack of a complete factual background diminishes the probative quality of Dr. DiMarco's opinion on causal relationship.<sup>8</sup> While Dr. DiMarco stated that appellant sustained a traumatic right knee injury and aggravated his preexisting pathologies on March 20, 2003, he did not explain how and why installing aircraft floor patches, kneeling or climbing stairs would cause this injury or aggravation. This is important given the time between

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>6</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>7</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>8</sup> *Lourdes Harris*, 45 ECAB 545 (1994).

the 2003 job duties and Dr. DiMarco's first discussion of causal relation two years later. Therefore, Dr. DiMarco's opinion is insufficiently rationalized to meet appellant's burden of proof in establishing causal relationship.<sup>9</sup> Regarding appellant's contention that the Office failed to develop the medical evidence, the Board finds that Dr. DiMarco's reports are of insufficient probative value to warrant further development of the claim.

Thus, appellant has not established that he sustained a right knee injury in the performance of duty on March 20, 2003 as he submitted insufficient rationalized medical evidence to establish causal relationship.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained a right knee injury in the performance of duty on March 20, 2003 as alleged.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 10, 2005 is affirmed.

Issued: March 9, 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

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<sup>9</sup> See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).