United States Department of Labor
Employees' Compensation Appeals Board

W.S., Appellant	)	
and	)	**Docket No. 07-1175**
	)	**Issued: November 13, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Trenton, NJ, Employer	)	

Appearances:
Thomas R. UIiase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 27, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated October 23, 2006, which denied his claim for an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this issue.

ISSUE

The issue is whether appellant established that he sustained a traumatic injury claim in the performance of duty.

FACTUAL HISTORY

Appellant filed a previous appeal with the Board for an occupational disease claim.[1] In a March 23, 2005 decision, the Board affirmed the July 15, 2004 decision of the Office, finding that appellant had not met his burden of proof to establish that he sustained a left knee condition

[1] Office File No. 022043772.

causally related to factors of his federal employment.[2] The facts and the history contained in the prior appeal are incorporated by reference.

The relevant facts establish that on July 25, 2002 appellant filed an occupational disease claim alleging that he was delivering mail on that date, when he walked down steps and turned, which caused his left knee to give way. He alleged that he did not fall and that it did not hurt until approximately one month later. In a November 6, 2003 statement, appellant advised that he did not fall or bump into anything with his left knee, but rather, "it just went limp" as he turned to deliver mail. He indicated that at first it did not hurt, so he did not seek medical attention or report it to his supervisor until it became burdensome approximately three weeks later. Appellant indicated that he then sought medical treatment, which resulted in surgery and placement in light duty.

On February 22, 2006 appellant filed a traumatic injury claim, alleging that on July 25, 2002 he "came down the steps after delivering the mail and my left knee gave away but I did not fall." He alleged that he sustained a torn ligament/ meniscus in the left knee. Appellant did not stop work at that time.[3] The employing establishment noted that appellant had previously filed an occupational disease claim under File No. 022043772, which was denied.

In support of appellant claim, he submitted an October 25, 2004 report from Dr. Todd C. Ryan, an attending osteopath, who noted that he was submitting an addendum and indicated that he had read appellant's November 6, 2003 statement. Dr. Ryan opined that appellant did have a twisting injury to his knee that initially did not bother him and later became increasing bothersome. He opined that appellant's injury was work related as "there was no other injury in regards to this."

In a letter dated February 27, 2006, the employing establishment controverted the claim contending that it was the same as that filed under File No. 022043772 and which was previously denied. The employing establishment alleged that appellant had refiled the claim on a Form CA-1 for the exact same injury of July 25, 2002. The employing establishment also alleged that the present claim was not timely filed.

By decision dated October 23, 2006, the Office denied appellant's claim on the grounds that he could not file a traumatic injury claim based on an occupational disease claim that had been previously denied and must instead appeal or reactivate his previously denied claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[4] 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

[2] Docket No. 05-161 (issued March 23, 2005).

[3] The record reflects that appellant retired on April 30, 2004.

[4] 5 U.S.C. §§ 8101-8193.

was timely filed within the applicable time limitation period of the Act[5] and that an injury was sustained in the performance of duty.[6] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

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.[8] 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.[9]

ANALYSIS

The Board finds that the Office properly denied appellant's traumatic injury claim as it was duplicative of his previously filed occupational disease claim. In his traumatic injury form, appellant is not claiming that he sustained a new injury, but alleged that his claim was a traumatic injury claim as opposed to an occupational disease claim, for which he had previously filed a claim. However, appellant's allegations remain the same as those that he alleged occurred in his occupational disease claim and those which the Office adjudicated in that claim. In the prior claim for an occupational disease, he alleged that, on July 25, 2002, while delivering mail, he walked down steps and turned and his left knee gave away. The Board affirmed the Office decision denying appellant's claim, on the basis that he did not meet his burden of proof to establish that his left knee condition was causally related to factors of his federal employment. While appellant may have filed the instant claim on a different form, his allegations remain the same. He has not alleged a new injury. The Board finds that the matter was addressed and considered with respect to his allegations that his injury occurred on July 25, 2002.

The legal doctrines of collateral estoppel, also known as issue preclusion and *res judicata*, also known as claim preclusion, may apply to adjudicatory determinations of administrative bodies that have attained finality.[10] "Finality" for purposes of administrative collateral estoppel is a two-step process requiring the decision to be final with respect to action

[5] *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *James E. Chadden Sr.*, 40 ECAB 312 (1988).

[7] *Delores C. Ellyet*, 41 ECAB 992 (1990).

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

[9] *Id*.

[10] *David E. Newman*, 48 ECAB 305 (1997); 2 Am. Jur. 2d Administrative Law § 381 (1994). Collateral estoppel may generally be applied to an administrative proceeding if: (1) there is identity of the parties and of the issues; (2) the parties had an adequate opportunity to litigate the issues in the administrative proceeding; (3) the issues to be estopped were actually litigated and determined in the administrative proceeding; and (4) findings on the issues to be estopped were necessary to the administrative decision.

by the administrative agency and the decision to have conclusive effect.[11] In *Leopoldo Sandoval*,[12] the Board applied the principle of *res judicata* to a decision of the United States Court of Appeals for the Fifth Circuit interpreting section 8132 and the amount of refund due the employee in a third-party recovery claim.[13] In *Hugo A. Mentink*,[14] the Board noted that the employee submitted argument in an application for review to the Office regarding the causal relationship of his hearing loss to his employment, an issue which had been reviewed and decided by the Board in a previous appeal. The Board noted that the decisions of the Board are final upon the expiration of 30 days following the date of its order and, in the absence of new review by the Director, the subject matter is *res judicata* and not subject to further consideration by the Board.

Appellant's allegations regarding the July 25, 2002 employment incident have previously been considered by the Board. He is precluded from making the identical allegations in a subsequent claim under the doctrine of collateral estoppel.[15] The assertions advanced by appellant in support of his traumatic injury claim were previously considered by the Board in its March 23, 2005 decision. The legal arguments raised by appellant with his traumatic injury claim are identical to those previously reviewed and decided by the Board in its March 23, 2005 decision pertaining to the occupational disease claim. While each claim involved the filing of a different claim form, the allegations in each claim are identical.[16] In both instances, appellant attributes his left knee conditions to the July 25, 2002 incident. Thus, the allegations in the February 22, 2006, traumatic injury claim are precluded under the doctrine of collateral estoppel.

CONCLUSION

The Board finds that the traumatic injury claim is duplicative and it was properly denied by the Office.

[11] *Id*. at § 382.

[12] 42 ECAB 282 (1990).

[13] *Id*. at 287. (Case citations omitted).

[14] 9 ECAB 628 (1958).

[15] *See David E. Newman, supra* note 10. Appellant is not precluded from submitting additional evidence under the previous, occupational, claim.

[16] Whether or not the initial claim would have been more properly adjudicated as a traumatic injury claim is essentially immaterial for purposes of this appeal as the Board has held that the technical requirements of pleading are inconsistent with the remedial purposes of the Act. *See Wilfred M. Hamilton*, 41 ECAB 524 (1990).

ORDER

IT IS HEREBY ORDERED THAT the October 23, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 13, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board