

indicated on the claim form that notice of appellant's claimed injury was received on July 22, 2006 and checked a box indicating that she was injured in the performance of duty. Appellant stopped work on July 22, 2006 and returned to work on August 13, 2006.

On July 22, 2006 appellant was seen in the emergency room at the Norton Community Hospital by Dr. Elpidio Capalad, a Board-certified emergency medicine physician. A triage assessor stated that appellant reported that she injured her left knee at work on July 6, 2006. The assessor stated, "Has not been seen by [medical doctor] yet. States thought it would stop hurting but has n[o]t." Dr. Capalad diagnosed internal derangement of the left knee and an unspecified strain.¹

In a July 22, 2006 note, Dr. Capalad indicated that appellant would be able to return to work on July 25, 2006. In an August 29, 2006 form report, Dr. Robert Means, an attending Board-certified orthopedic surgeon, stated that appellant reported sustaining injury when she "bent down to pull a bin and felt pop in left knee." He diagnosed knee pain and recommended various work restrictions. Dr. Means completed a form indicating that appellant should be off work from August 17 to 22, 2006. In August 2006 appellant began to participate in physical therapy sessions and her therapist noted that she reported at her initial evaluation that she injured her left knee at work on July 6, 2006 when she pulled a personal bin in a cell. An August 8, 2006 form in which Dr. Means authorized physical therapy lists the diagnosis of strain of the left knee capsule. An August 10, 2006 form signed by appellant's therapist and Dr. Means indicates that she sustained a left knee strain with no obvious signs of internal derangement.

A September 8, 2006 magnetic resonance imaging (MRI) scan of appellant's left knee showed a lateral patellar dislocation with edema and heterogeneous signal within the cartilage of the medial aspect of the patella as well as a partial thickness tear of the medial retinaculum and heterogeneous signal in the patellar tendon suspicious for partial thickness tear.

In a May 25, 2007 letter, the Office requested that appellant submit additional factual and medical evidence in support of her claim. Appellant submitted additional documents including reports of physical therapy sessions.

In a June 26, 2007 decision, the Office denied appellant's claim for an employment-related injury on July 6, 2006. It found that she did not establish the occurrence of an employment incident on that date. The Office stated, "No statement regarding the exact mechanism of the injury was ever provided that corroborated your account of how the injury happened."

Appellant requested a review of the written record by an Office hearing representative. She submitted a September 17, 2007 letter in which the safety manager at the employing establishment stated, "I have no reason to believe [appellant's] injury was not a work-related injury and feel she is entitled to receive [Office] benefits for this injury."

¹ Another portion of the report of appellant's July 22, 2006 visit contained the diagnosis "[rule out] internal derangement left knee."

In a November 8, 2007 decision, the Office hearing representative affirmed the Office's June 26, 2007 decision denying appellant's claim for an employment-related injury on July 6, 2006. Appellant's claim was again denied on the grounds that she did not establish the occurrence of an employment incident on July 6, 2007.²

LEGAL PRECEDENT

An employee who claims benefits under the Federal Employees' Compensation Act³ has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁴ An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁵ An employee has not met his or her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁶ Such circumstances 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, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.⁷ 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.⁸

It is well established that proceedings under the Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁹

ANALYSIS

On August 1, 2006 appellant filed a traumatic injury claim alleging that she sustained an employment-related injury to her left knee on July 6, 2006 when she bent down to pull a property bin out from under a bed while conducting a prison cell search.¹⁰ The Office denied appellant's

² The Office hearing representative also indicated that appellant did not submit sufficient medical evidence but she did not discuss the submitted medical evidence in the analysis portion of her decision.

³ 5 U.S.C. §§ 8101-8193.

⁴ *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

⁵ *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

⁶ *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

⁷ *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

⁸ *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

⁹ *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁰ Appellant indicated that she heard a pop in her left knee.

claim for an employment-related injury on July 6, 2006 on the grounds that she did not establish the occurrence of an employment incident on that date.

The Board finds that appellant had established the employment incident of July 6, 2006. Appellant's statements regarding her claimed left knee injury are consistent with the surrounding facts and circumstances and her subsequent course of action and there are no inconsistencies in the evidence that would cast serious doubt upon the validity of her claim.¹¹ Appellant consistently reported the same mechanism of her claimed July 6, 2006 injury to attending physicians, a triage assessor and a physical therapist, *i.e.*, that she heard a pop in her left knee when she bent down and pulled a bin. Appellant reported a July 6, 2006 left knee injury with the same mechanism of injury when she first sought medical care for her left knee condition on July 22, 2006. She explained that she delayed in seeking medical care for her left knee condition because she thought the pain would stop on its own. Appellant stopped work and reported the claimed injury to her supervisor on the date she first sought medical care, *i.e.*, July 22, 2006. There was no unexplained delay in seeking treatment, stopping work or reporting the claimed injury.¹² The record does not contain strong or persuasive evidence refuting appellant's account of her claimed left knee injury and therefore she has established the occurrence of an employment incident on July 6, 2006 in the form of bending down and pulling a property bin.

As the Office denied appellant's claim on the grounds that she did not establish the occurrence of an employment incident on July 6, 2006, it did not perform any meaningful evaluation of the medical evidence.¹³ The case will be remanded to the Office for evaluation of the medical evidence to consider whether appellant sustained an injury or disability due to the accepted July 6, 2006 employment injury.¹⁴ After such development as it deems necessary, the Office should issue an appropriate decision on this matter.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant met her burden of proof to establish that she sustained an injury on July 6, 2006 in the performance of duty. The Board finds that she has established the occurrence of an employment incident on July 6, 2006, but the case must be remanded to the Office for further evaluation of the medical record.

¹¹ See *supra* notes 5 and 6 and accompanying text.

¹² See *supra* note 7 and accompanying text.

¹³ Appellant's attending physicians suggested that she sustained various left knee conditions due to the reported employment incident on July 6, 2006.

¹⁴ See *supra* note 9 and accompanying text.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' November 8 and June 26, 2007 decisions are set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: October 23, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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