

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

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**S.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Cincinnati, OH, Employer**

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**Docket No. 09-865  
Issued: March 1, 2010**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 12, 2009 appellant, through counsel, filed a timely appeal from a January 9, 2009 decision of an Office of Workers' Compensation Programs which affirmed a July 2, 2008 decision denying her claim of injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

**ISSUES**

The issue is whether appellant met her burden of proof to establish that she sustained an injury on March 8, 2008, as alleged.

**FACTUAL HISTORY**

On March 10, 2008 appellant, then a 48-year-old letter carrier, filed a Form CA-2a, recurrence of disability, alleging that on March 8, 2008 she was walking through deep snow and experienced pain and weakness in her left upper thigh.<sup>1</sup> She sought medical treatment and

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<sup>1</sup> Appellant referenced file number xxxxxx349 on the form.

returned to work on March 10, 2008. Appellant's supervisor, Wesley Craig, stated that appellant previously sustained a dog bite on the left leg on December 15, 2007.

In an undated emergency room report, appellant was diagnosed with left quadriceps pain.<sup>2</sup> The physician reported that she had initially sustained a dog bite while delivering mail and that she exacerbated her condition by overuse walking in deep snow. The physician restricted her from prolonged walking or standing. A follow-up date of March 10, 2008 was noted on the report.

On March 10 and 17, 2008 Dr. Steven R. Gamm, a Board-certified emergency room physician, noted that appellant was seen for an exacerbation of left thigh pain. He noted that she had been walking in deep snow for two and one-half to three hours on March 10, 2008 when she felt her left leg quivering. On physical examination, Dr. Gamm noted tenderness on palpation of the distal quadriceps and limited knee mobility. He diagnosed exacerbation of left thigh pain.

On March 27, 2008 Dr. Gamm diagnosed dog bite to the left thigh with exacerbation of pain. Appellant related that she had been placed on restricted duty and that her leg symptoms had not changed. Physical examination revealed pain on palpation of the left distal thigh medially and some voluntary restricted knee motion.

By letter dated April 16, 2008, the Office requested additional information from appellant. It asked her to submit a medical report from her treating physician containing a reasoned explanation as to how the specific work factors or incidents contributed to her left leg condition.

In a letter dated April 21, 2008, the Office advised appellant that the factual evidence did not establish that she sustained a recurrence of disability. Rather, her claim would be adjudicated as a new traumatic injury and was assigned file number xxxxxx464.

In response, appellant submitted a statement and an April 9, 2008 report from Dr. Gamm who diagnosed left thigh dog bite with exacerbation of pain. Dr. Gamm reported that appellant continued to have knee instability when putting "weight on it as in a walking motion."

In a decision dated July 2, 2008, the Office denied appellant's claim, finding that the evidence was not sufficient to establish that she sustained injury on March 8, 2008. It denied her claim on the grounds that the evidence of record was insufficient to establish that she sustained an injury causally related to the accepted March 8, 2008 employment incident.

On July 9, 2008 appellant's counsel requested a telephonic hearing which was held on November 3, 2008. Appellant testified at the telephonic hearing that she sustained a dog bite on March 6, 2007. She related that she believed the incident of walking in deep snow occurred in December 2007. Appellant testified that, while she had walked in snow during March 2008, the incident which aggravated her left leg condition occurred in December 2007. She noted that she went to the emergency room for treatment and reported this to the employing establishment. Appellant stated that she did not know why the date of March 8, 2008 was used as she could not

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<sup>2</sup> The signature of the examining physician is illegible.

recall anything specific happening on that date. The hearing representative requested the submission of additional factual evidence; no further evidence was received.

Appellant subsequently submitted medical reports from Dr. Gamm dated March 8, 2007 to September 2, 2008 and physical therapy notes for the period March 30, 2007 to May 2, 2008. Dr. Gamm provided a diagnosis of dog bite of the left thigh and listed work restrictions. In reports dated May 6 and 27, July 8 and September 9, 2008, he diagnosed dog bite of the left thigh. A physical examination on May 6, 2008 revealed some complaints of weakness on extension and good full knee mobility. On May 27, 2008 a physical examination revealed good stability and mobility of the left knee and “diffuse discomfort to palpation of the distal quadriceps.” A physical examination performed on September 2, 2008 revealed “tenderness still remaining at the quadriceps medially” and a palpable soft tissue defect in the muscle belly. Dr. Gamm reported full left knee mobility and extension.

By decision dated January 9, 2008, the Office hearing representative affirmed the denial of appellant’s claim.

### **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 timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions 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 upon a traumatic injury or an occupational disease.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup> The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant’s own belief that there is a causal relationship between his or her claimed injury and his

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *S.E.*, 60 ECAB \_\_\_ (Docket No. 08-2214, issued May 6, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *N.S.*, 59 ECAB \_\_\_ (Docket No. 07-1652, issued March 18, 2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *S.P.*, 59 ECAB \_\_\_ (Docket No. 07-1584, issued November 15, 2007).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *B.F.*, 60 ECAB \_\_\_ (Docket No. 09-60, issued March 17, 2009).

or her employment.<sup>9</sup> To establish a causal relationship, appellant must submit a physician's report, in which the physician reviews the employment factors identified by her as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and her medical history, states whether the employment injury caused or aggravated appellant's diagnosed conditions and presents medical rationale in support of his or her opinion.<sup>10</sup>

### ANALYSIS

The Office accepted that the incident occurred while walking in snow on March 8, 2008 as alleged, but denied the claim on the grounds that the medical evidence was insufficient to establish that her condition was causally related to the incident. The Board, however, finds that appellant has failed to substantiate that she sustained a traumatic injury while walking in deep snow on March 8, 2008. There are inconsistencies in the factual evidence which cast serious doubt on the validity of her claim.

Appellant has provided inconsistent versions as to when the alleged incident occurred. On her original claim form, she noted that she experienced pain and weakness in her upper left thigh while walking in deep snow on March 8, 2008. On the back of the form, her supervisor noted that appellant sustained a dog bite on December 15, 2007, but that it did not affect her performance. At the hearing, appellant testified that she sustained the dog bite on March 6, 2007 and that the incident of walking in deep snow occurred in December 2007. She also testified that she did not recall any thing happening on March 8, 2008. Appellant attributed the pain and weakness in her upper left thigh to walking in deep snow in December 2007. She also testified that she went to the emergency room for treatment of her injury. Appellant did not know why the date of March 8, 2008 was used and that she was unsure of the exact date of the incident.

Appellant has provided conflicting statements as to the date of the alleged incident. She originally stated that she was walking in snow on March 8, 2008, but later testified that the incident occurred in December 2007. She did not provide an specific date in December 2007 and testified that she could not recall the exact date of the incident. Appellant has not explained why she listed March 8, 2008 as the date of the incident on her claim form and stated that it occurred in December 2007.

Appellant has failed to establish the fact of injury. She provided conflicting evidence regarding when the employment incident occurred. The Office hearing represented requested that appellant submit additional factual evidence regarding the date of the alleged incident. Appellant failed to submit such evidence. Given the inconsistencies in the evidence of record the

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<sup>9</sup> *S.S.*, 59 ECAB \_\_\_ (Docket No. 07-579, issued January 14, 2008); *J.M.*, 58 ECAB 303 (2007); *Donald W. Long*, 41 ECAB 142 (1989).

<sup>10</sup> *K.E.*, 60 ECAB \_\_\_ (Docket No. 08-1461, issued December 17, 2008).

Board finds that there is insufficient evidence to establish that incident occurred on March 8, 2008 as alleged.<sup>11</sup>

**CONCLUSION**

The Board finds that appellant has not established that she sustained a traumatic injury on March 8, 2008.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 9, 2009 is affirmed, as modified.

Issued: March 1, 2010  
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

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<sup>11</sup> See *Mary Joan Coppolino*, 43 ECAB 988 (1992) (the Board found that discrepancies and inconsistencies in appellant's statements describing the injury created serious doubts that the injury was sustained in the performance of duty).