

on April 28, 2007, she had not alleged a traumatic incident on that date. The employing establishment noted that she had a preexisting right knee condition for which she filed a claim in March 2001.

Appellant submitted an emergency room report dated April 28, 2007 which indicated that she was examined and treated for right knee pain on April 28, 2007; the pain was the result of a fall she experienced on that date. The report was not signed by a physician.

By letter dated October 5, 2009, the Office advised appellant that she needed to submit additional factual and medical evidence in support of her claim. It advised her that her statement did not adequately describe the circumstances of her injury; therefore, she needed to clarify why she fell and how she landed on April 28, 2007. In addition, the Office asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition, a diagnosis of the condition and an opinion as to whether her claimed condition was causally related to her federal employment. Appellant submitted a packet of factual and medical evidence which was received by the Office on November 3, 2009.

In her October 13, 2009 statement, appellant stated that she was walking her mail route, delivering mail on April 28, 2007 when she felt a sharp pain in her right knee, causing her knee to buckle, resulting in her falling to the ground on both knees.

Appellant submitted treatment notes dated July 7 and 27, 2007 from Dr. John J. Sharkey, a specialist in orthopedic surgery, who indicated that she was experiencing right knee pain and diagnosed compartmental osteoarthritis of the right knee.

Appellant submitted an October 25, 2007 x-ray report, received by the Office on November 3, 2009, which showed degenerative changes in the right knee predominantly involving the patellofemoral and medial compartment, with varus deformity. The report diagnosed degenerative joint disease of the right knee with genu varus deformity.

In an October 25, 2007 report, Dr. Robert Myerson, a surgeon and appellant's treating physician, stated that he was treating her for a work-related injury to her knees which occurred when she fell while working on July 26, 2007. He related that she was injured when her right knee buckled and she fell forward onto her knees. Dr. Myerson noted that x-rays were negative and that appellant was placed on light duty. He stated that she had complaints of bilateral pain and stiffness in her knees and had difficulty walking for long periods, in addition to difficulty bending, climbing stairs and sitting with her knees in a bent position. Dr. Myerson reviewed the October 25, 2007 x-ray results and advised that appellant had severe bicompartamental changes in the right knee with loss of medial joint space, osteophyte formation and loss of joint space in the patellofemoral joint. He diagnosed post-traumatic arthritis, superimposed on osteoarthritis, of the right knee.

In a report dated November 1, 2007, Dr. Myerson stated that he had evaluated appellant on October 25, 2007 for a work-related right knee injury. He stated that her physical examination was significant for swelling and restricted range of motion of the right knee and that her x-rays showed advanced post-traumatic arthritis.

In a May 29, 2008 report, Dr. Myerson presented progress notes from December 2007 and January, February and May 2008 which indicated that appellant was experiencing pain and swelling in her right knee which caused difficulty walking. He stated that she had hospital records from April 28 and July 26, 2007. Dr. Myerson stated that on May 29, 2008 appellant reported an exacerbation of right knee pain. He indicated that she sustained an injury to her right knee which resulted from a work-related fall. Dr. Myerson also submitted progress reports dated October 2008, June and September 2009 which indicated that appellant was still experiencing right knee pain.

On November 3, 2009 the Office received a witness statement from Mr. Cola, who indicated that he observed appellant fall to the ground on April 28, 2007 after experiencing a sharp pain in her right knee.

By decision dated November 9, 2009, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained a work-related injury on April 28, 2007. It stated that the cause of her April 28, 2007 fall was of nonoccupational pathology. The Office therefore found that, as appellant did not strike any intervening object or surface on the way down, she did not sustain an injury in the performance of duty on April 28, 2007.

LEGAL PRECEDENT

The Federal Employees' Compensation Act¹ provides for the payment of compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.² In deciding whether an injury is covered by the Act, the test is whether, under all the circumstances a causal relationship exists between the employment itself or the conditions under which it is required to be performed and the resultant injury. The phrase while in the performance of duty has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of arising out of and in the course of employment. The phrase course of employment is recognized as relating to the work situation and more particularly, relating to elements of time, place and circumstance.

In addressing this issue, the Board has stated the following: In the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his or her master's business; (2) at a place where he or she may reasonable be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.³ The employee must establish the concurrent requirement of an injury arising out of the employment. Arising out of employment requires that a factor of employment caused the injury. It is incumbent upon the employee to establish that the claimed injury arose out of his or her employment; that is, the accident must be shown to have resulted

¹ 5 U.S.C. §§ 8101-8193.

² *Id.* at § 8102(a).

³ *Charles Crawford*, 40 ECAB 474 (1989); *Mary Keszler*, 38 ECAB 735 (1987).

from some risk incidental to the employment. In other words, some contributing or causal employment factor must be established.⁴

When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.⁵

ANALYSIS

Appellant alleged that she sustained injuries to her right knee on April 28, 2007 when her knee buckled while she was walking her regular mail route and she fell. The Office denied her claim on the grounds that her fall was idiopathic. The Board finds that this case is not in posture for decision.

Appellant has alleged a specific incident of employment, arising in the course of employment and in the performance of duty. She has explained that her knee buckled while she was walking her route on April 28, 2007. As appellant was clearly required to walk to deliver her route and the evidence of record establishes that her fall did occur while she was on her route, she has established an incident of employment arising out of employment, in the performance of her employment: that she was walking her route on the day in question when the fall occurred. This case is unlike a case of whether a letter carrier simply feels knee pain and falls, without any explanation of the mechanism of injury, arising out of employment that caused the pain.⁶

The next question is whether this accepted incident, appellant's walking her route on the day in question caused her to fall and sustain injury. The Office did not accept an incident of employment in this case and therefore the Office did not evaluate whether appellant's knee buckling caused the resulting fall and injury. The Board notes that the Office denied the claim on the grounds that appellant's preexisting knee condition caused the fall. The Office classified the fall as idiopathic. The Board also notes however that appellant had a previous accepted claim for knee injury in the year 2000.⁷ Appellant has submitted medical evidence to the record which generally supports a work-related injury.

As the Office has not evaluated the medical evidence to determine whether the accepted incident of employment and/or appellant's previously accepted right knee injury caused her to fall and sustain further knee injury on April 28, 2007, the Board finds that this case is not in posture for decision. It shall consolidate this claim with the prior claim for injury, file number xxxxxx706.

⁴ *L.K.*, 59 ECAB 465 (2008).

⁵ *See Arthur C. Hamer*, 1 ECAB 62 (1947).

⁶ *See E.D.*, Docket No. 09-257 (issued August 25, 2009).

⁷ File No. xxxxxx706.

On remand, after such further development as appropriate, the Office shall determine whether appellant's fall and subsequent knee condition were causally related to the accepted incident of employment.

CONCLUSION

The Board finds that this case is not in posture for decision. After such further development of the evidence as necessary the Office shall issue a *de novo* decision.

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2009 decision of the Office of Workers' Compensation Programs is set aside and remanded.

Issued: January 3, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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