United States Department of Labor
Employees' Compensation Appeals Board

N.H., Appellant	)	
and	)	**Docket No. 10-1434**
	)	**Issued: January 24, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Havertown, PA, Employer	)	

Appearances:
Appellant, pro se
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 April 16, 2010 appellant filed a timely appeal from a February 19, 2010 merit decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an injury on June 3, 2009 in the performance of duty.

FACTUAL HISTORY

On June 6, 2009 appellant, then a 47-year-old letter carrier, filed a claim alleging that on June 3, 2009 he sustained swelling around his left knee when he slipped on wet grass. He stopped work on June 15, 2009. In an accompanying statement, appellant related that on June 3, 2009 he was delivering mail when he slipped in a "baseball slide" on wet grass going down a

small hill. His knee was sore but he did not believe that he was badly injured. The next day appellant's knee was swollen.

In a June 5, 2009 statement, Theresa McLeod, a supervisor, related that, when appellant returned to the office on June 5, 2009, he told her that his leg was swollen. She asked if he was reporting an accident but he was "very unsure with his response." Appellant initially told Ms. McLeod that it occurred at one address but later indicated that it happened at a different address. Ms. McLeod noted that he reported to work on June 5, 2009 and worked all day without reporting the incident.

On June 6, 2009 Leslie Johnson, a supervisor, related that he spoke with appellant on June 3, 2009 when he returned to the workstation after delivering mail. Appellant told him that "everything was okay."

On June 9, 2009 Lavonne Nickens, a supervisor, maintained that on Thursday morning appellant informed her that he might be slower that day because he "fell in a baseball slide the previous day." She asked if he had fallen on duty but he stated that he had not. In a statement dated June 9, 2009, Dennis Esterine, the postmaster, related that Ms. Nickens advised him that appellant had "injured himself playing baseball the night before."

On June 16, 2006 Dr. Charles D. Hummer, Jr., a Board-certified orthopedic surgeon, diagnosed a contusion and medial meniscus strain of the left knee. He described the injury as occurring on June 3, 2009 when appellant "was walking across some wet grass when he slipped and twisted his left knee." Dr. Hummer listed findings of minimal left knee effusion and tenderness of the medial joint line. Appellant could perform sedentary employment. In a duty status report of the same date, Dr. Hummer listed the history of injury as a slip on grass and found that appellant could perform sedentary employment.

By decision dated July 24, 2009, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish fact of injury. It determined that he failed to establish that the work incident of June 3, 2009 occurred as alleged due to conflicting factual evidence.

In an emergency room report dated June 6, 2009, received by the Office on September 27, 2010, Dr. Matthew D. Cook, an osteopath, evaluated appellant for pain and swelling of the knee.[1] He noted that appellant described the injury as occurring three days prior when appellant slipped on wet grass while delivering mail. Dr. Cook diagnosed a knee sprain and referred appellant to a workers' compensation physician for evaluation.

On July 30, 2009 appellant requested an oral hearing. At the November 16, 2009 hearing, he related that on June 3, 2009 he cut through a yard to get to a mailbox and his leg slipped and he fell. Appellant described the incident as a "baseball slide" because of his leg position. He asserted that the employing establishment used his description of the injury to state that he was injured playing baseball. Appellant denied playing baseball. On June 3, 2009 he felt pain in his knee but continued his route. Appellant was uncertain of the exact address of the area

[1] Dr. Cook noted that appellant had pain and swelling of the right knee; however, it appears that this is a typographical error.

where he was injured. He did not immediately report the injury because he believed that he was not badly injured. Appellant stated that he limped while completing his route the next day.

By decision dated February 19, 2010, the Office hearing representative affirmed the July 24, 2009 decision. She found that appellant did not establish that the June 3, 2009 incident occurred as alleged and that the medical evidence did not provide any opinion on causation.

On appeal appellant described the June 3, 2009 work incident. He denied telling Ms. Nickens that he injured his leg playing baseball. Appellant contended that he provided a consistent description of the June 3, 2009 work incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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.[3] 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.[4]

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.[6] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[7]

An employee who claims benefits under the Act[8] has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the

[2] 5 U.S.C. §§ 8101-8193.

[3] *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[4] *See Elizabeth H. Kramm (Leonard O. Kramm),* 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[5] *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

[6] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[7] *Id.*

[8] *Supra* note 2.

reliable, probative and substantial evidence.[9] 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.[10] An employee has not met his or her burden of proof of 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.[11] 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.[12] 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.[13]

ANALYSIS

Appellant alleged that he injured his left knee on June 3, 2009 when he slipped on wet grass and fell. He described the incident as a "baseball slide" because of his leg position. On June 6, 2009 appellant filed a traumatic injury claim and sought medical treatment. 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.[14]

The Board finds that the evidence does not contain inconsistencies sufficient to cast serious doubt on appellant's version of the employment incident. While appellant did not immediately report his injury and could not recall the address where it occurred, this does not render the claim factually deficient. He did not inform management of a knee injury immediately because he thought that his knee would be better by the next day. A supervisor told a manager that appellant injured his knee playing baseball; however, he explained that he used the term "baseball slide" to describe his fall because of his leg position. Appellant denied playing baseball. He sought medical treatment within three days of the alleged June 3, 2009 employment incident. The June 6, 2009 emergency room report provided a history of injury generally consistent with his account of events: that appellant slipped on wet grass while delivering mail three days prior. The record contains no contemporaneous factual evidence to establish that the claimed incident did not occur as alleged.[15] Under the circumstances of this case, appellant's allegations are not refuted by strong or persuasive evidence. The Board finds

[9] *D.B.*, 58 ECAB 464 (2007); *George W. Glavis*, 5 ECAB 363, 365 (1953).

[10] *M.H.*, 59 ECAB 461 (2008); *Betty J. Smith*, 54 ECAB 174 (2002).

[11] *S.P.*, 59 ECAB 184 (2007); *V.F.*, 58 ECAB 321 (2007).

[12] *See M.H, supra* note 10; *John D. Shreve*, 6 ECAB 718, 719 (1954).

[13] *S.P., supra* note 11; *Wanda F. Davenport*, 32 ECAB 552, 556 (1981).

[14] *Caroline Thomas*, 51 ECAB 451 (2000).

[15] *See Thelma Rogers*, 42 ECAB 866 (1991).

that the evidence of record is sufficient to establish that the June 3, 2009 incident occurred at the time, place and in the manner alleged.

The remaining issue is whether the medical evidence establishes that appellant sustained an injury causally related to the employment incident. In order to establish a causal relationship between the diagnosed condition and any resulting disability and the employment incident, he must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such causal relationship.[16]

On June 6, 2009 Dr. Cook treated appellant for knee pain and swelling. He indicated that the injury to the knee occurred when he slipped on wet grass at work three days earlier. Dr. Cook diagnosed a knee sprain and referred appellant to a workers' compensation physician for evaluation. He did not, however, specifically address whether the knee sprain resulted from the identified work incident. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[17]

On June 16, 2009 Dr. Hummer noted that appellant slipped on wet grass and twisted his left knee on June 3, 2009. He diagnosed a contusion and medial meniscus strain of the left knee. Dr. Hummer released appellant to sedentary employment. He did not, however, explain whether the diagnosed conditions resulted from the June 3, 2009 work incident. A physician must provide an opinion on whether the employment incident described caused or contributed to claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rationale.[18]

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 claimed condition and his employment.[19] Appellant must submit a physician's report in which the physician reviews those factors of employment identified by him as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.[20] He failed to submit such evidence and, therefore, failed to discharge his burden of proof.

On appeal appellant described in detail the circumstances surrounding his injury. He maintained that he provided a consistent history of injury. The Board agrees that appellant has established that the June 3, 2009 incident occurred as alleged. The issue is now whether the medical evidence is sufficient to show that he sustained a medical condition as a result of the

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[16] *T.H.*, 59 ECAB 388 (2008); *James Mack*, 43 ECAB 321 (1991).

[17] *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009); *Conrad Hightower*, 54 ECAB 796 (2003).

[18] *John W. Montoya*, 54 ECAB 306 (2003).

[19] *D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

[20] *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).

incident. Appellant has the burden to submit rationalized medical evidence supporting that he sustained a medical condition as a result of the June 3, 2009 employment incident.[21] As discussed, the medical evidence is insufficient to meet his burden of proof.

CONCLUSION

The Board finds that, although the June 3, 2009 employment incident occurred as alleged, appellant has not established that he sustained an injury on June 3, 2009 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the February 19, 2010 decision of the Office of Workers' Compensation Programs affirmed, as modified to reflect that the June 3, 2009 incident occurred as alleged.

Issued: January 24, 2011
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

[21] *D.I.*, 59 ECAB 158 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).