



The employing establishment controverted the claim for failing to report the injury within 30 days.

By letter dated March 13, 2012, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was asked to respond to the questions provided in the letter within 30 days.

In an undated narrative statement, appellant stated that he was on his route and stepped on stairs when he slipped and fell, causing his right knee to pop and become very sore. He stated that he immediately informed his supervisor about his injury and agreed to wait to see if his knee would improve before filing an injury claim. Appellant stated that his pain continued and his knee would give out when walking and going up and down stairs.

In a January 31, 2012 medical report, Dr. David Scott Anderson, Board-certified in internal medicine, reported that appellant complained of left toe pain which he noticed when walking his mail route. He noted that appellant also complained of a sore right knee which began in the summer of 2011 after he fell getting out of his mail truck.<sup>2</sup> Since that time, appellant's knee would give out several times a day causing him jolts of pain. Upon physical examination, Dr. Anderson stated that the medial collateral ligament (MCL) was loose which allowed the joint to swing open. He diagnosed right knee pain, noting a likely MCL tear and meniscal damage and recommended a magnetic resonance imaging (MRI) scan of the right knee due to an abnormal physical examination. In a January 31, 2012 duty status report (Form CA-17), Dr. Anderson stated that appellant could return to work with restrictions.

By letter dated March 19, 2012, the employing establishment controverted the claim stating that Dr. Anderson's January 31, 2012 report stated that appellant's right knee pain began in the summer of 2011 and never mentioned a January 23, 2012 fall.

By decision dated April 20, 2012, OWCP denied appellant's claim finding that the evidence did not establish that the incident occurred, as alleged.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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 FECA; 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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup> 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.<sup>4</sup>

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<sup>2</sup> The Board has no information on whether appellant filed a claim before OWCP for the incident noted.

<sup>3</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>4</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>5</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he or she sustained an injury in the performance of duty he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.<sup>6</sup> Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation is causally related to the accepted injury.<sup>7</sup>

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>8</sup>

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.<sup>9</sup> The opinion of the physician must be based on one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>10</sup>

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<sup>5</sup> *Elaine Pendleton*, *supra* note 3.

<sup>6</sup> *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

<sup>7</sup> *Supra* note 5.

<sup>8</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>9</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>10</sup> *James Mack*, 43 ECAB 321 (1991).

## ANALYSIS

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on January 23, 2012.

Appellant must establish all of the elements of his claim in order to prevail. He must prove that an incident occurred at the time, place and in the manner alleged, and that the incident resulted in an injury. Appellant alleged that on January 23, 2012 he slipped and fell on stairs, causing his right knee to pop and become sore.

Appellant has not provided the sufficient detail needed to establish that the incident occurred in the manner alleged.<sup>11</sup> He failed to adequately describe the circumstances of his injury and failed to present evidence regarding the specific mechanism of injury, as required in a claim for traumatic injury.<sup>12</sup> Although appellant claims that he informed his supervisor on the date of the employment incident, he did not provide any statements from his supervisor supporting that claim. Moreover, he did not file a claim and notify the employing establishment until March 6, 2012, over six weeks after the alleged incident. Appellant failed to report the incident to his supervisor in a timely manner and did not identify any possible witness to the event. The employing establishment also controverted the claim.

The evidence of record casts further doubt upon the validity of appellant's claim. Dr. Anderson's January 31, 2012 medical report stated that appellant had a sore right knee which began in the summer of 2011 after he fell getting out of his mail truck. Since that incident, appellant's knee would give out several times a day and caused him pain. Dr. Anderson's report noted a prior right knee injury from an incident having occurred in the summer of 2011. The Board notes that, while appellant could have a preexisting knee injury which was aggravated by the January 23, 2012 employment incident, Dr. Anderson's report makes no mention of the latter employment incident. Thus, his report casts doubt that appellant's injury occurred at the time, place and in the manner alleged, as he makes no mention of a January 23, 2012 employment incident having occurred approximately one week prior to appellant's visit for right knee pain. Moreover, Dr. Anderson's report does not offer any rationalized medical opinion or evidence by history to fill in the gaps in appellant's account of the January 23, 2012 incident. Thus, appellant failed to provide evidence to establish that the incident occurred at the time, place and in the manner alleged and his claim was properly denied.

The Board further notes appellant's burden of proof to establish fact of injury also requires that he provide a physician's rationalized opinion stating a firm medical diagnosis related to this alleged incident. Dr. Anderson's diagnosis of right knee pain is a description of a symptom rather than a clear diagnosis of a medical condition.<sup>13</sup> His opinion that appellant likely had an MCL tear and meniscal damage is speculative and does not establish a medical diagnosis.

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<sup>11</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>12</sup> *Paul Foster*, 56 ECAB 1943 (2004).

<sup>13</sup> The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

As Dr. Anderson does not mention the alleged work-related incident or diagnose a specific injury, his report is insufficient to establish fact of injury.

In the instant case, appellant failed to provide evidence to prove the fact of injury; its time, place and manner and resulting injury. Thus, OWCP properly denied his claim for compensation.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 and 10.607.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on January 23, 2012.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated April 20, 2012 is affirmed.

Issued: March 1, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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