

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHERYL A. STANTON and U.S. POSTAL SERVICE,
POST OFFICE, West Chester, Ill.

*Docket No. 96-1422; Submitted on the Record;
Issued June 1, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof to establish her claim for a medial meniscal tear, for which she underwent surgery on June 9, 1995.

The Board finds that appellant has not met her burden of proof to establish her claim for a medial meniscal tear, for which she underwent surgery on June 9, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ The Office's regulations clarify that a traumatic injury refers to injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift whereas occupational disease refers to injury produced by employment factors which occur or are present over a period longer than a single workday or shift. *See* 20 C.F.R. §§ 10.5 (a)(15), (16).

diagnosed condition is causally related to the employment factors identified by the claimant.⁴ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁵

In August 1988 the Office of Workers' Compensation Programs accepted that appellant sustained a left knee strain on June 22, 1988, when her knee popped while delivering mail. Dr. William J. McMahon, a general surgeon associated with the medical center where appellant was referred by the employing establishment, found a lack of objective findings to support a condition other than a strain at the time.⁶ Appellant received authorization to have an evaluation by an orthopedic surgeon, but instead obtained treatment from a chiropractor, who recommended that she limit her delivery activities to three hours per day. Based on the lack of authorization for treatment from a chiropractor, the record indicates that appellant remained off treatment until more than two years later, when she returned to Dr. McMahon for further evaluation after her knee popped at work, causing her to fall again. Dr. McMahon diagnosed a recurrent left knee sprain. The record indicates that appellant continued to have intermittent problems with her left knee until mid-April 1995, when she was evaluated by Dr. Alfred A. Akkeron, an orthopedic surgeon.⁷ Dr. Akkeron provided a history of falling down stairs in June 1988, when her knee gave way, with complaints of intermittent pain and popping of the knee since that time. He noted a lack of evidence of effusion or joint crepitation and referred her for a magnetic resonance imaging (MRI) scan. The MRI performed on April 23, 1995 revealed a possible anterior cruciate ligament and medial meniscal tears with small joint effusion. Appellant stopped work on May 10, 1995 and on June 9, 1995 she underwent surgery, performed by Dr. Akkeron. He recommended 6 to 12 weeks of total disability. In his treatment notes, Dr. Akkeron discussed the potential coverage of workers' compensation, but did not provide any opinion on the relationship between the condition and appellant's employment.

Appellant indicated her reasons why she felt the condition appearing in 1995 and prior to that date, was the same condition as the injury in 1988. She identified two other incidents at work on December 24, 1990 and January 21, 1992 when her knee popped and she fell, and she requested that these alleged injuries be accepted as she had obtained the same kind of treatment as she obtained after her 1988 injury. Appellant noted that she sought evaluation by an orthopedic surgeon based on the severity of her pain on April 10, 1995 and her dissatisfaction with the lack of findings of Dr. McMahon. Appellant contended that repeated buckling of her knee contributed to her condition and need for surgery. She sought wage-loss compensation for the period she was off work from May 13 until July 27, 1995, as she returned to work on July 31, 1995.⁸

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁵ *Gary R. Fulbright*, 40 ECAB 737 (1989); *Edward E. Olson*, 35 ECAB 1099, 1103 (1984), *Juanita Rogers*, 34 ECAB 544, 546 (1983).

⁶ X-rays taken after the June 22, 1988 incident at work were negative and he noted on a follow-up evaluation two months later, the lack of objective findings. At that time he diagnosed arthralgia

⁷ The record indicates that between 1990 and 1995 appellant filed separate claims of injuries to her knee and back which were developed separately. Appellant indicated that she fell at work on ice because of her weak knee, and she informed her supervisor on April 10, 1995 of her knee pain.

⁸ In a July 1995 statement, the employing establishment listed the incidents alleged by appellant between

By decision dated March 6, 1995, the Office denied appellant's claim for a medial meniscal tear due to her federal employment, and denied payment of wage-loss compensation for the claimed period.

The Board notes that the Office accepted appellant's claim for a left knee strain based on the medical evidence at that time, which did not reveal a condition other than a strain. The burden of proof is on appellant to establish a condition other than a knee strain, due to her federal employment. Appellant has not submitted any medical evidence containing an opinion from a physician addressing the causal relationship between her work duties or the three falls at work, and her condition diagnosed in mid-April 1995. As stated above, the mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment as the condition may be revelatory of an underlying condition.⁹ Because appellant did not submit any medical evidence addressing the relationship between her recurrent popping of the knee and subsequent diagnosed condition to her work factors, appellant has not met her burden of proof to establish a work-related condition other than the accepted knee strain.

The decision of the Office of Workers' Compensation Programs dated March 6, 1995 is hereby affirmed.

Dated, Washington, D.C.
June 1, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

December 24, 1990 and February 7, 1994 pertaining to her left knee giving way.

⁹ See *supra* note 5.