

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAURABELLE COMBRE and DEPARTMENT OF HOUSING & URBAN
DEVELOPMENT, FORT WORTH REGIONAL OFFICE, Fort Worth, Tex.

*Docket No. 97-2761; Submitted on the Record;
Issued May 20, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on August 14, 1996, as alleged.

The Board has duly reviewed the case record in the present appeal and finds that the Office of Workers' Compensation Programs properly determined that appellant failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty on August 14, 1996, as alleged.

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, and that the claim was filed within the applicable time limitations of the Act.² An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,³ that the injury was sustained while in the performance of duty,⁴ and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁶

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Robert A. Gregory*, 40 ECAB 478 (1989).

⁴ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *Steven R. Piper*, 39 ECAB 312 (1987).

⁶ *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

There is no dispute that appellant is a federal employee, that she timely filed her claim for compensation benefits and that the incident occurred as alleged. Appellant, an organization management personnel specialist, claimed that on August 14, 1996, while walking down nine flights of stairs during a fire drill, she injured her knees.⁷ However, by decisions dated January 22 and August 19, 1997, the Office found that the evidence was insufficient to establish that an injury resulted from the incident.

The Board finds that appellant has not established that the August 14, 1996 employment incident resulted in an injury. To support the claim, appellant submitted a November 19, 1996 attending physician's supplemental report (Form CA-2a) by Dr. Melvin L. Parnell, a Board-certified orthopedic surgeon. He stated that his most recent examination of appellant for the August 14, 1996 employment-related incident was on November 12, 1996. Dr. Parnell stated a diagnosis of "revision of total knee replacement" and checked "no" to the question on whether appellant's present condition is due to the injury for which compensation is claimed. He indicated that appellant could return to work on November 12, 1996 for two days a week for four to six hours with restrictions. Also submitted were his office notes covering the period August 1 through December 10, 1996. On August 1, 1996 Dr. Parnell noted that appellant returned for follow-up of her knees and hips after taking new medication. On September 3, 1996 he noted appellant's report of changes in her left knee which on physical examination was confirmed. Dr. Parnell also noted that the changes could be due to a stress fracture, osteolysis, or infection, "although other things such as trauma and fracture could also produce the same picture." He advised appellant to consider a revision of the left knee. On October 8, 1996 Dr. Parnell saw appellant after a total left knee arthroplasty. He stated that "everything looks good." On November 12, 1996 Dr. Parnell noted that "overall I am pleased with what I see," and he stated "As far as working, I feel that she can work two days a week, four to six hours per day, provided that she not be required to do any prolonged walking, standing, or climbing." On December 10, 1996 he examined appellant and stated that "I am very pleased with what I see on today's examination. Based on today's examination, [appellant] can discontinue her formal physical therapy, but I recommended that she continue with her home exercise program. She asked about returning to work and she is given a note to return to work as of January 6, 1997 with no restrictions on her level of physical activity."

In this case, there is no rationalized medical opinion evidence supporting a causal relationship between appellant's employment and her diagnosed hip and knee conditions. On a November 19, 1996 attending physician's report, Dr. Parnell, a Board-certified orthopedic surgeon, indicated the date of injury as August 14, 1996, that he most recently saw appellant on November 12, 1996, diagnosed "revision of total knee replacement" and checked "no" to the question of whether appellant's present condition is due to the injury for which compensation is claimed. Although Dr. Parnell diagnosed hip and knee conditions in his office notes covering the period August 1, 1996 (which was prior to the August 14, 1996 employment-related incident) through December 10, 1996, he did not address whether these conditions were causally related to the August 14, 1996 employment-related incident. Nowhere in his notes does Dr. Parnell even mention the August 14, 1996 employment-related incident. By letter dated December 30, 1996,

⁷ A witness stated that after going down nine flights of stairs, and on the next day, appellant complained to her about problems with her knees.

the Office advised appellant of the type of evidence needed to establish his claim, but such evidence has not been submitted.⁸ Therefore, the Board finds that the evidence of record is insufficient to meet appellant's burden of proof.⁹

The decision of the Office of Workers' Compensation Programs dated August 19 and January 22, 1997¹⁰ are affirmed.

Dated, Washington, D.C.
May 20, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁸ In appellant's February 18, 1997 request for reconsideration of the Office's January 22, 1997 decision, appellant stated that she never received the Office's December 30, 1996 letter requesting additional information. The record supports that the Office's December 30, 1996 request for additional information was sent to appellant at the address of record and does not indicate that it was returned as undeliverable. Under the "mailbox rule," it is presumed, absent evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. *A.C. Clyburn*, 47 ECAB 153 (1995).

⁹ The Board notes that item 75 of the record belongs to someone other than appellant.

¹⁰ In her February 18, 1997 request for reconsideration appellant also stated that she eventually received the Office's December 30, 1996 request for information in which it stated she had 30 days to reply. However, the Office's decision was issued on January 22, 1997 only 23 days after the issuance of the December 30, 1996 letter. While appellant is correct that the Office's January 22, 1997 decision was issued prior to the expiration of the 30 days allotted for her to respond to the December 30, 1996 request for information, the Board finds that since appellant stated that "After receiving the letter of December 30, 1996 from Mr. Jordan, I am enclosing the information request in the letter of the same date" and the Office conducted a merit review on reconsideration, appellant was not harmed by the Office's failure to adhere to section 10.110(b) of the regulations.