U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT CASTRO and DEPARTMENT OF THE TREASURY, U.S. CUSTOMS SERVICE, Great Falls, MT

Docket No. 98-1640; Submitted on the Record;
Issued February 14, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM, BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on May 21, 1997, as alleged, which caused the need for surgery.

On June 20, 1997 appellant, then a 58-year-old supervisory customs inspector, filed a notice of traumatic injury (Form CA-1) alleging that he suffered a left knee injury. Appellant stated that he "was sitting in a chair. As I rose from the chair, I caught the back of my knee on the corner of the seat. This action caused me to lose my balance and in the process, I twisted my left knee." On the reverse side of the form, the employing establishment indicated that it received notice of injury on June 23, 1997 and the date of injury was indicated as May 21, 1997. The employing establishment also indicated that appellant did not stop work.

On December 17, 1997 the record was supplemented to include a December 11, 1997 report by Dr. James W. Lamberton, an orthopedic surgeon, who stated that he first saw appellant on August 14, 1997 for pain in his left knee. Appellant related a history of having injured his knee in mid-March 1997 during an altercation at work. Dr. Lamberton further stated:

> "Within a couple of days [appellant's] knee was quite sore and became more sore over the next several days. He did not notice any actual catching in his knee at that time and denied any buckling of the joint. Eventually [appellant's] pain resolved. [Appellant] reinjured his knee on May 21, [1997]. He was sitting in his chair in his office while at work. He turned to get up out of the chair and as he got up he stumbled and twisted his knee. He continue to have problems with his knee after that incident and two months later his knee literally 'locked.' He had to manipulate his knee about to unlock it and due to persistent symptoms he was evaluated by his personal physician, Greg Ledgerwood, M.D. Dr. Ledgerwood ordered a magnetic resonance imaging (MRI) scan of the knee that demonstrated

> a torn medial meniscus. [Appellant] was referred to me for further definitive treatment."

Dr. Lamberton also stated:

> "[Appellant] was taken to surgery on October 17, 1997 and at the time of arthroscopy was found to have a torn medial meniscus. He was treated appropriately with a partial medial meniscectomy as well as resection of a medial parapatellar plica. He has responded well with the surgery and is now back to regular-duty work and doing quite well."

Dr. Lamberton further stated:

> "This letter is being written to clarify the incident that lead to [appellant's] torn meniscus. There is no question but that this is a job-related injury and I am requesting that this be reviewed by your department and be handled in an appropriate manner. [Appellant] should be compensated for time loss from work as well as for the medial expenses that have occurred as a result of the injury."

On January 27, 1998 the record was supplemented with appellant's medical consent for an arthroscope procedure, hospital admissions instructions and post arthroscopy care instructions. Also submitted was a January 12, 1998 report by Dr. Ledgerwood, a Board-certified family practitioner. Dr. Ledgerwood stated:

> "[Appellant] saw me on June 25, 1997 for complaints of a knee that was injured at work and proceeded to complain of locking and buckling. An MRI of the knee was ordered showing a torn medial meniscus. I, at that point in time, referred appellant to Dr. Jim Lamberton who, on October 17, 1997 took him to surgery to repair the damage. The incident that [appellant] described to me, in fact did result in this torn meniscus and if there are questions concerning this please do n[o]t hesitate to be in touch. [Appellant] was off work from October 17, 1997 through November 2, 1997 and then went back to work."

Also submitted was a December 26, 1997 statement from appellant in which he requested retroactive approval for an injury claim and subsequent surgery.

By letter dated January 30, 1998, the Office of Workers' Compensation Programs requested additional information from appellant, specifically, a description of any past injuries to the left knee and/or medical conditions, a description of the mid-March altercation at work and copies of treatment notes prior and subsequent to May 21, 1997 and MRI results.

On February 23, 1998 the record was supplemented with an October 17, 1997 operative report by Dr. Lamberton who described the arthroscopy procedure that was performed that day; an undated report, by Dr. Lamberton giving a medical history and physical findings. In the report, Dr. Lamberton attributed a torn posterior half of the medial meniscus of the left knee which was revealed by an MRI, to a mid-March altercation at work; an August 14, 1997 report by Dr. Lamberton who stated, "[appellant] injured his knee about mid March when he was

involved in an altercation while on the job"; a November 18, 1997 report by Dr. Lamberton in which he discusses a one-month post left knee arthroscopy; a July 1, 1997 report of a July 1, 1997 MRI by Dr. Mark Weber, a Board-certified radiologist. Dr. Weber interpreted the MRI as showing "torn medial meniscus involving mid and posterior portions, degenerative change in lateral meniscus. No tear is seen laterally, small knee joint effusion"; an August 14, 1997 radiology report by an unidentified radiologist indicating a normal left knee, appellant's February 2, 1998 response to the Office's January 30, 1998 request for additional information. Appellant stated that in mid-March he twisted his knee, but did not report it or seek medical treatment. He also stated that between March and May 1997 his left knee would "lock up" periodically. He also stated that he saw Dr. Ledgerwood on May 21, 1997 and told him of catching his knee on a chair; and Dr. Ledgerwood's progress notes covering June 25 through July 24, 1997. On June 25, 1997 he noted that "apparently [appellant] thought he had a pinched nerve after sitting in a chair that was tilted incorrectly."

By decision dated March 26, 1998, the Office denied appellant's claim on the grounds that fact of injury was not established as there were such inconsistencies as to cast serious doubt on the validity of the claim.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on May 21, 1997 as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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]

In a traumatic injury case, the employee must establish by the weight of reliable, probative and substantial evidence that the occurrence of an injury is in the performance of duty at the time, place and in the manner alleged and that the injury resulted from a specific event or

[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).

incident.[7] The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[8]

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.[9] 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.[10]

In this case, appellant has not established fact of injury because of inconsistencies in the evidence that cast serious doubt as to whether the specific incident occurred at the time, place and in the manner alleged. Appellant did not notify his supervisor until June 23, 1997 approximately a month after the alleged May 21, 1997 incident. There were no witnesses nor did appellant state that he mentioned the incident to anyone, he continue to work without apparent difficulty following the alleged incident and he failed to obtain medical treatment until June 25, 1997 approximately a month after the alleged May 21, 1997 incident. In addition, when he did obtain medical treatment he gave varying accounts of the alleged incident, *i.e.*, that he caught the back of his knee on the corner of a chair seat, that he stumbled and twisted his knee; and that he was sitting in a chair tilted incorrectly. It is appellant's responsibility to establish how, when and where he sustained an injury. In addition, the medical evidence submitted provided varying histories of injury.

In view of the inconsistencies in appellant's statements regarding how, where and when he sustained his injury, the lack of contemporaneous medical evidence and the medical evidence submitted giving varying histories of injury, the Board finds that there is insufficient evidence to establish that appellant sustained an injury to his left knee in the performance of duty on May 21, 1997, as alleged, or that such an incident caused the need for surgery.

[7] *See Joshua Fink*, 35 ECAB 822, 823-24 (1984).

[8] *Eric J. Koke*, 43 ECAB 638 (1992); *Mary Joan Cappolino*, 43 ECAB 988 (1992).

[9] *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

[10] *Robert A. Gregory*, *supra* note 4; *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

The decision of the Office of Workers' Compensation Programs dated March 26, 1998 is affirmed.

Dated, Washington, D.C.
February 14, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member