

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICKEY M. HEWITT and U.S. POSTAL SERVICE,
POST OFFICE, Gretna, LA

*Docket No. 00-1724; Submitted on the Record;
Issued April 12, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant met his burden of proof to establish that his right knee condition was caused or aggravated by factors of his employment; and (2) whether the Office of Workers' Compensation Programs properly denied his request for a review of the written record.

On September 27, 1999 appellant, then a 35-year-old letter carrier, filed an occupational disease claim. He stated that he had sustained a torn ACL (anterior cruciate ligament) in his right knee while serving in the military in 1986. Appellant indicated that in 1994 he began experiencing problems with the knee locking up or giving way and was told by his physician that he had a torn ACL of the right knee. The employing establishment challenged appellant's claim on the grounds that he did not explain how his condition was causally related to his job.

By letter dated October 12, 1999, the Office asked appellant to explain how his right knee condition was related to his employment.

No response from appellant to the October 12, 1999 Office letter is of record.

By decision dated November 18, 1999, the Office denied appellant's claim on the grounds that he had failed to establish that his right knee condition was causally related to factors of his employment.¹

By letter dated January 19, 2000, appellant requested a review of the written record and explained why he believed his right knee condition was caused or aggravated by his job.

¹ The Board notes that additional evidence was submitted subsequent to the issuance of the Office's November 18, 1999 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

By decision dated March 13, 2000, the Office denied appellant's request for review of the written record on the grounds that his request was not timely filed within 30 days of the Office's November 18, 1999 decision and that the issue in the case could equally well be addressed by a request for reconsideration and the submission of new evidence establishing that he sustained an injury due to factors of his employment.

The Board finds that appellant failed to establish that his right knee injury was caused or aggravated by factors of his employment.

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.² Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance of duty and that his disability was caused or aggravated by his employment.³ As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.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 Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.⁶

In this case, appellant filed a claim for a right knee condition but he did not explain how the condition was caused or aggravated by factors of his employment.⁷ Furthermore, he did not submit medical evidence establishing that his condition was causally related to factors of his employment.⁸ Therefore, he did not meet his burden of proof to establish that he sustained an injury to his right knee causally related to factors of his employment.

The Board further finds that the Office properly denied appellant's request for a review of the written record.

Section 8124(b) of the Federal Employees' Compensation Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary is entitled to a hearing on his claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary.⁹ As section 8124(b)(1) is

² *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

³ *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

⁴ *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

⁵ *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

⁶ *Id.*

⁷ Appellant indicated in his claim form that his right knee condition was a preexisting condition.

⁸ As noted above, the Board has no jurisdiction to review the evidence submitted by appellant subsequent to the issuance of the Office's November 18, 1999 merit decision.

⁹ *See* 5 U.S.C. § 8124(a).

unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.¹⁰ As appellant's request for a hearing was dated January 19, 2000, more than 30 days after the Office's November 18, 1999 decision, appellant was not entitled to a hearing as a matter of right. However, the Office exercised its discretion and properly determined that the issue in the case, causal relationship, could equally well be resolved by a request for reconsideration and the submission of additional evidence.

The decisions of the Office of Workers' Compensation Programs dated March 13, 2000 and November 18, 1999 are affirmed.

Dated, Washington, DC
April 12, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹⁰ See *Charles J. Prudencio*, 41 ECAB 499, 501 (1990); see also 20 C.F.R. § 10.616(a) (1999).