U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL W. ROBERTS and U.S. POSTAL SERVICE,
POST OFFICE, St. Paul, MN

Docket No. 02-711; Submitted on the Record;
Issued August 28, 2002

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty on April 5, 2001.

On April 27, 2001 appellant, then a 54-year-old ramp clerk, filed a claim for compensation alleging that he injured his left knee and hip April 5, 2001 while pulling a piece of mail out of a cart.

In support of his claim, appellant submitted a duty status report from Dr. Daniel Napoli, a chiropractor, and an accident report. Dr. Napoli diagnosed appellant with a torn meniscus of the left knee and sacroiliac pain. He noted that appellant could not return to work at the present time. The accident report detailed appellant's injury.

By letter May 10, 2001, the Office of Workers' Compensation Programs requested additional medical evidence from appellant stating that the initial information submitted was insufficient to establish an injury. The Office particularly advised appellant of the type of medical evidence needed to establish his claim.

Appellant submitted a work restriction form dated May 10, 2001 prepared by Dr. Wes Peters, a Board-certified orthopedic surgeon; an off work slip and a narrative statement. Dr. Peters work restriction form indicated that appellant could return to work part time on May 19, 2001 with work restrictions. Appellant's narrative statement indicated that he initially fell on February 8, 2001 when he stepped over a tongue of an airline cart and injured his left knee. He indicated that he sought medical treatment after this incident on March 1, 2001, however, he was not satisfied with the physician and sought chiropractic treatment on March 5, 2001 with Dr. Napoli. Appellant sustained another injury on April 5, 2001 when he pulled a container out of a mail cart and fell injuring his left knee and hip. He noted that he sought medical treatment and thereafter underwent surgery to repair his left knee.

In a decision dated June 12, 2001, the Office denied appellant's claim as the medical evidence was not sufficient to establish that the condition was caused by the employment factor as required by the Federal Employees' Compensation Act.[1]

In a letter dated June 12, 2001, appellant requested a review of the written record and submitted additional medical evidence. He submitted an x-ray of his hip dated March 1, 2001; an x-ray of the left knee dated April 9, 2001; treatment notes from Dr. Peters dated April 9, 2001 to June 18, 2001; and a magnetic resonance imaging (MRI) scan dated April 12, 2001. The hip x-ray dated March 1, 2001 revealed no abnormalities. The x-ray of the left knee revealed no abnormalities. The MRI scan revealed a subtle complex tear of the posterior horn of the medial meniscus near its central attachment. The treatment notes from Dr. Peters dated April 9 to June 18, 2001 revealed a history of appellant's fall on February 8, 2001 and his subsequent treatment. He noted that appellant also fell on April 5, 2001. Dr. Peters' note of April 27, 2001 indicated that appellant injured his left knee when he slipped on ice. He diagnosed that appellant sustained post-traumatic medial meniscus tear and obesity. Dr. Peters' note of May 18, 2001 indicated that appellant underwent a left knee arthroscopy on May 10, 2001 to repair a medial meniscal tear. He noted that appellant would make a full and complete recovery and would return to work with work restrictions for the first week and then return to normal duty. Dr. Peters' note of June 18, 2001 indicated that appellant's knee was healing well and that his hip pain ceased. He noted that appellant could return to work without restrictions.

In a decision dated December 6, 2001, the Office denied appellant's request for modification of the decision dated June 12, 2001 on the grounds that the evidence submitted was not sufficient to meet appellant's burden of proof that he sustained an injury in the performance of duty.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty on April 5, 2001 as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation 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 compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[3]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been

[1] 5 U.S.C. §§ 8101-8193

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

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.[4] In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.[5] An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.[6]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. 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.[7]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be 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. 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.[8]

In this case, it is not disputed that appellant was lifting a piece of mail out of a cart on April 5, 2001. However, he has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the employment factor and that any alleged left knee or hip condition are causally related to the employment factors or conditions. On May 10, 2001 the Office advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit any medical report from an attending physician addressing how specific employment factors may have caused or aggravated his left knee or hip condition.

[4] *Elaine Pendleton, supra* note 2.

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[7] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[8] *James Mack*, 43 ECAB 321 (1991).

In support of his claim, appellant submitted reports from Dr. Napoli, a chiropractor. The Board has held that medical opinion, in general, can only be given by a qualified physician.[9] Pursuant to sections 8101(2) and (3) of the Act[10] the Board has recognized chiropractors as physicians to the extent of diagnosing spinal subluxations according to the Office's definition[11] and treating such subluxations by manual manipulation.[12] The Board has held chiropractic opinions to be of no probative medical value on conditions beyond the spine.[13] As a chiropractor may only qualify as a physician in the diagnosis and treatment of spinal subluxation, his opinion is of probative medical value only with regard to the spine.[14]

In this case, Dr. Napoli did not diagnose a spinal subluxation as demonstrated by x-ray to exist and therefore is not considered a physician and his report is given no probative value.

Appellant also submitted treatment notes from Dr. Peters dated April 9 to June 18, 2001. Dr. Peters diagnosed appellant with a tear of the medial meniscus of the left knee and obesity. He noted a history of appellant's fall in February 8, 2001[15] and his subsequent injury on April 5, 2001. However, Dr. Peters' reports do not include a rationalized opinion regarding the causal relationship between appellant's left knee and hip condition's and the factors of employment believed to have caused or contributed to such condition.[16] Therefore, these reports are insufficient to meet appellant's burden of proof. Additionally, Dr. Peters' note of April 27, 2001 indicated that appellant injured his left knee when he "slipped on ice stepping over something." However, this statement conflicts with the history appellant provided in his narrative of May 12, 2001 in which he described two different falls but none involving slipping

[9] *See George E. Williams*, (44 ECAB 530) (1993); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949); *Donald J. Miletta*, 34 ECAB 1822 (1983) (medical evidence must be in the form of a reasoned opinion by a qualified physician based on a complete and accurate factual and medical history of the employee whose claim is being considered).

[10] 5 U.S.C. §§ 8101(2) and (3).

[11] 20 C.F.R § 10.400(e).

[12] *See, e.g., Christine L. Kielb*, 35 ECAB 1060, 1061 (1984).

[13] *Raymond F Young*, 33 ECAB 1234 (1982) (radiculitis affecting knee and leg); *Garland R.. Hyder*, 30 ECAB 1356 (1979) (arm strain); *Howard J. Bostick*, 33 ECAB 320 (1981) (radiculitis and paresthesia of wrist); *Vivian E. Peek*, 31 ECAB 602, 604 (1980) (hypertension); *Theresa K. McKenna*, 30 ECAB 702, 705 (1979) (lumbosacral radiculitis and sciatica); *Carolyn Nappier (Leon Nappier)*, 32 ECAB 158, 160 (1980) (osteoarthritis of the spine and "neurofibercitis"); *Lula B. Gettis*, 33 ECAB 425 (1982) (sciatica).

[14] 5 U.S.C. § 8101(2) provides: "The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine."

[15] The record does not reflect that appellant filed a claim for compensation for the injury sustained February 8, 2001.

[16] *See Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

on ice. Dr. Peters' report did not indicate that he is familiar with the history of the injury.[17] Therefore, this report is insufficient to meet appellant's burden of proof.

The remainder of the medical evidence fails to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[18] Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated December 6 and June 12, 2001 are affirmed.

Dated, Washington, DC
August 28, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[17] *See Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

[18] *See Victor J. Woodhams*, 41 ECAB 345 (1989).