U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEONARD WELCH and U.S. POSTAL SERVICE, POST OFFICE, New Orleans, LA

Docket No. 02-148; Submitted on the Record; Issued June 11, 2002

DECISION and ORDER

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

The issue is whether appellant established that he sustained an injury in the performance of duty on March 19, 1999.

On March 22, 1999 appellant, a 46-year-old letter carrier, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that he sustained an injury to his right knee while in the performance of duty on March 19, 1999. He stated that he "accidentally bumped [his] right knee on the case."

On March 24, 1999 Dr. Gregg A. Bendrick diagnosed right knee effusion, synovitis.[1] Appellant subsequently underwent arthroscopic surgery on his right knee to repair, among other things, a "degenerative tear" of the posterior half of the medial meniscus.[2]

In a decision dated June 28, 1999, the Office of Workers' Compensation Programs denied appellant's claim on the basis that he failed to establish a causal relationship between his claimed right knee condition and the March 19, 1999 employment incident.

Appellant requested a review of the written record and in a decision dated November 17, 1999 the Office hearing representative affirmed the June 28, 1999 decision denying appellant's claim.

[1] The record also includes an undated Form CA-20 signed by Jack Mason. The report noted a diagnosis of "right knee effusion, synovitis," but did not include a history of injury or otherwise address the etiology of appellant's diagnosed condition. Appellant represented that Mr. Mason is a physician's assistant who treated him on March 24, 1999.

[2] On April 23, 1999 Dr. J. Lockwood Ochsner, Jr., a Board-certified orthopedic surgeon, performed a right medial meniscectomy and medial femoral chondroplasty. In his May 2, 1999 report, Dr. Ochsner diagnosed Grade 3 chondromalacia changes over the patellofemoral joint, full thickness articular cartilage loss over the medial femoral condyle and a degenerative tear of the posterior half of the medial meniscus. Additionally, he stated "as far as this being related to work, it is hard to say for sure whether this articular defect was just degenerative or traumatic."

On three subsequent occasions appellant requested reconsideration of his claim and obtained a merit review. The Office denied modification initially on June 22, 2000 and again on January 29, 2001. And by decision dated July 27, 2001, the Office similarly denied modification regarding appellant's third and most recent request for reconsideration.

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on March 19, 1999.

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[3] The second component is whether the employment incident caused a personal injury.[4]

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 the condition was caused, precipitated or aggravated by her employment is sufficient to establish a causal relationship.[5] Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[6] A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.[7] Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors.[8]

In the instant case, appellant failed to meet his burden of demonstrating that his claimed right knee condition was caused by the March 19, 1999 employment incident. The record indicates that appellant underwent a fitness-for-duty examination in July 1995. The examining physician, Dr. Douglas A. Swift, noted, among other things, complaints of low back pain and stiffness and a history of "[b]ilateral knee pain for the past 11 years." With respect to appellant's knees, Dr. Swift further noted that he denied "any injuries and any effusion," but noted that his "right knee occasionally pops." Appellant reportedly indicated that squatting and prolonged walking aggravated his knee condition. On physical examination, Dr. Swift noted full range of motion in both knees with no evidence of effusion. Additionally, he noted slight patellar femoral crepitants in both knees, but no evidence of any ligamentous instability. X-rays of appellant's

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

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

[5] *Robert G. Morris*, 48 ECAB 238, 239 (1996).

[6] *Id.*

[7] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] *Id.*

knees showed "some very minor narrowing of the lateral compartment of the left knee," but otherwise the x-rays were normal. Dr. Swift concluded with respect to appellant's back and knee complaints that there was no evidence of any impairment and that he was fit for work without restrictions. Notwithstanding Dr. Swift's assessment, appellant apparently continued to experience low back and bilateral knee pain as noted in a March 5, 1996 physician's statement of light duty prepared by Dr. Yvens G. LaBorde, a Board-certified internist.

Following the March 19, 1999 employment incident, appellant received treatment at the Ochsner Clinic on March 24, 1999. The attending physician, Dr. Bendrick, diagnosed right knee effusion (synovitis). The treatment notes also indicate that appellant stated, "he saw Dr. Swift in the past for this problem [complaints of] swelling/pain [right] knee." However, absent from the notes is any clear recitation of the circumstances of appellant's March 19, 1999 employment incident. And Dr. Bendrick did not otherwise comment on the etiology of appellant's right knee condition.

Dr. Ochsner, who performed arthroscopic surgery on appellant's right knee, was the first physician to address the question of whether appellant's condition was employment related. In his April 23, 1999 report, Dr. Ochsner stated that appellant "remembers striking the right knee on an open drawer and having pain and problems with it about a month ago." In a subsequent report dated May 2, 1999, he stated "as far as this being related to work, it is hard to say for sure whether this articular defect was just degenerative or traumatic, though the meniscal tear and the loss of articular cartilage match up." Dr. Ochsner further explained that the tear is over the same area that makes contact with the articular cartilage and "I think that more likely than not, they are related." Although unsure, Dr. Ochsner appears to attribute appellant's loss of articular cartilage to the same degenerative process responsible for appellant's right meniscal tear. He, however, did not specifically address the cause of appellant's Grade 3 chondromalacia changes over the patellofemoral joint.

Dr. Ochsner subsequently completed a June 23, 1999 Form CA-20 attending physician's report, wherein he diagnosed medial meniscal tear. He noted the following history of injury: "striking the knee on an open drawer and having pain." Dr. Ochsner responded "no" to the question of whether there was a history or evidence of concurrent or preexisting injury. And he responded "yes" to the question of whether the diagnosed condition was caused or aggravated by an employment activity. However, Dr. Ochsner did not provide an explanation for attributing appellant's condition to his employment. He also did not provide a reason for his apparent change of opinion regarding the etiology of appellant's right knee condition. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.[9] Accordingly, Dr. Ochsner's June 23, 1999 opinion is insufficient to establish causal relationship.

In a report dated April 20, 2000, Dr. Christopher E. Marrero stated that appellant's right knee chondromalacia was probably caused by the injury on March 19, 1999 and was not likely a

[9] *Lee R. Haywood*, 48 ECAB 145, 147 (1996).

result of degenerative disease as appellant did not have any symptoms prior to his injury. He reiterated his opinion in a subsequent report dated March 19, 2001.

Dr. J. Lee Moss, a Board-certified orthopedic surgeon, examined appellant on March 15, 2001 and reported that appellant sustained an injury at work on March 19, 1999 that required arthroscopic surgery of his right knee. He explained that because appellant had no prior symptoms or injury to his right knee it "appears that his treatment, including surgery and therapy, is related to a work injury."

Neither Drs. Marrero nor Moss expressed awareness of appellant's prior complaints of bilateral knee pain as reported by Dr. LaBorde in 1996 and Dr. Swift in 1995.[10] As the reports of Drs. Marrero and Moss are based on an incomplete factual and medical background, their respective opinions are insufficient to establish a causal relationship between appellant's condition and the March 19, 1999 employment incident.[11]

While the record is inconclusive as to whether appellant had a preexisting right knee condition, there are at least two documented instances where appellant complained of bilateral knee pain prior to the March 19, 1999 employment incident. Furthermore, Dr. Ochsner initially characterized appellant's right knee condition as "degenerative" in nature. The medical evidence attributing appellant's condition to the March 19, 1999 employment incident is not sufficient to carry appellant's burden because Drs. Marrero and Moss did not discuss appellant's prior complaints of knee pain. And Dr. Ochsner did not explain his apparent change of opinion regarding the etiology of appellant's condition. As the record is devoid of any rationalized medical evidence demonstrating a causal relationship between appellant's right knee condition and the March 19, 1999 employment incident, the Office properly denied compensation.

[10] In a letter dated November 15, 2000, Dr. Swift stated that he could not make a determination of whether appellant's injury on March 19, 1999 was the cause of his knee problems. He also stated that he never saw appellant for an injury to the right knee and that his prior report dated July 18, 1995 outlined the purpose of appellant's visit at that time.

[11] *Victor J. Woodhams*, *supra* note 7.

The July 27, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 11, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member