

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TOMMEY F. JONES and U.S. POSTAL SERVICE,
POST OFFICE, Newark, NJ

*Docket No. 02-1038; Submitted on the Record;
Issued September 26, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained a knee injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On March 5, 1998 appellant, then a 62-year-old carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he sustained a knee injury causally related to his federal employment.¹ He stated that his knee problem was the result of walking, kneeling and climbing steps during his federal employment. Appellant stated that he first became aware of his knee injury on January 4, 1988. He retired on January 2, 1998.

In support of his claim, appellant submitted a report from Dr. Mark A. Hartzband, a Board-certified orthopedist, dated February 2, 1995 and an attending physicians report dated March 21, 1995. Dr. Hartzband indicated that he was treating appellant for bilateral knee pain which began in 1986 when he was a mail carrier. He noted appellant continued to work with persistent pain in the knees and in 1993 he stopped working as a letter carrier because he was unable to ascend or descend steps and had since performed the job of a router. Dr. Hartzband indicated that x-rays of the knees revealed osteoarthritis. He diagnosed appellant with osteoarthritic knees. The attending physician's report diagnosed appellant with proliferative osteoarthritis. Dr. Hartzband indicated with a checkmark "yes" that the condition was caused or aggravated by an employment activity and noted that the progression of the condition was due to bilateral meniscal tears that went untreated.

Appellant filed a notice of recurrence of disability indicating that he experienced a recurrence of his knee condition in July 1995 which was causally related to his February 13, 1998 injury.

¹ The record reflects that a CA-2, notice of occupational disease claim, was filled out on February 29, 1988 alleging that appellant sustained a right knee condition as a result of his federal employment.

Appellant submitted an operative note dated October 20, 1995; x-rays of the knees dated October 20, 1995; a fitness-for-duty examination dated April 2, 1996; and a light-duty form dated April 15, 1996. The operative note dated October 20, 1995 indicated that appellant underwent a right cemented total knee arthroplasty and left cemented total knee arthroplasty. Dr. Hartzband diagnosed appellant with bilateral osteoarthritis of the knees. The fitness-for-duty examination dated April 2, 1996 noted that appellant was postsurgery and diagnosed him with osteoarthritis of the knees. The note indicated that appellant was unable to work from October 20, 1995 to April 15, 1996. The light-duty form noted appellant could return to work with restrictions on lifting, climbing and a prohibition on letter carrying. Appellant also filed a narrative statement indicating that he injured his left knee in 1974 and was treated by Dr. Godwin. He noted that in January 1988 he began experiencing bilateral knee problems. Appellant noted that he attempted to file a Form CA-2 in 1988 however his supervisor indicated that the appropriate filing was a notice of recurrence. He filed a notice of recurrence which was later denied. Appellant noted his bilateral knee condition was due to the constant walking, standing and climbing down stairs and entering and exiting his mail truck.

In a letter dated July 17, 1998, the Office advised appellant of the type of factual and medical evidence needed to establish his claim. The Office requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

Appellant submitted a medical report from Dr. Horia H. Schwartz, Board-certified in physical medicine and rehabilitation, dated April 8, 2000. Dr. Schwartz noted a history of appellant's condition indicating that he was a letter carrier and experienced discomfort in both knees when walking and delivering mail. He provided an impairment rating of 20 percent impairment of the whole person.

On February 27, 2001 appellant filed a claim for a schedule award.²

On July 3, 2001 the Office issued a decision and denied appellant's claim for compensation under the Federal Employees' Compensation Act. The Office found that the medical evidence was not sufficient to establish that the condition was caused or aggravated by employment factors.

By letter dated August 1, 2001, appellant requested reconsideration of his claim and submitted additional medical evidence. He submitted a report from Dr. Alan Godwin, an internist, dated March 14, 1988; a medical report from Dr. Teofilo A. Dauhajre, a Board-certified orthopedist, dated March 16, 1988; a duplicate report from Dr. Schwartz dated April 8, 2000; and a duplicative personal statement. Dr. Godwin's report noted that appellant sustained an injury in 1974 when he fell getting out of a postal truck. He diagnosed appellant with osteoarthritis of both knees. The medical report from Dr. Dauhajre dated March 16, 1988 indicated that appellant had been treated since February 10, 1988. He noted appellant would need surgical intervention and that he should be placed on light duty.

² The Office did not issue a final decision with regard to appellant's claim for a schedule award and therefore the Board does not have jurisdiction over the matter. See 20 C.F.R. § 501.2(c).

By decision dated October 16, 2001, the Office denied appellant's request for reconsideration on the grounds that the evidence was not sufficient to warrant review of the prior decision.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a knee injury in the performance of duty.

An employee seeking benefits under the 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 timely filed within the applicable time limitation period of the Act, that the 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. 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.⁵

In the instant case, it is not disputed that appellant walked, kneeled and climbed as part of his job duties. However, appellant did not submit sufficient medical evidence from an attending physician addressing how specific employment factors may have caused or aggravated his bilateral knee condition. On July 17, 1998 the Office advised appellant of the type of medical evidence needed to establish his claim.

Appellant submitted a report from Dr. Hartzband dated February 2, 1995 indicating that he treated appellant for bilateral knee pain which began in 1986 to 1987. He noted that appellant

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

continued to work with persistent pain in the knees and in 1993 he stopped working as a letter carrier because he was unable to ascend or descend steps. Dr. Hartzband diagnosed appellant with osteoarthritic knees. Even though he noted that appellant was experiencing symptoms of his bilateral knee condition which was exacerbated by his position, without any further explanation or rationale, such report is insufficient to establish a causal relationship.⁶ Dr. Hartzband's reports do not include a rationalized opinion regarding the causal relationship between appellant's bilateral knee condition and the factors of employment believed to have caused or contributed to such condition.⁷ Therefore, these reports are insufficient to meet appellant's burden of proof. The only other report supporting causal relationship is the attending physicians report dated March 21, 1995, prepared by Dr. Hartzband which noted appellant had proliferated osteoarthritis of the knees whose progression was due to bilateral meniscus tears which went untreated. He indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁸

Appellant also submitted a medical report from Dr. Schwartz dated April 8, 2000 which noted appellant was a letter carrier and "became very uncomfortable in both knees as a result of walking up and down the streets delivering mail." He provided an impairment rating of 20 percent permanent impairment of the whole person. However, Dr. Schwartz's report does not note the employment factors believed to have caused or contributed to appellant's right knee condition⁹ nor does it include a rationalized opinion regarding the causal relationship between appellant's bilateral knee condition and the factors of employment believed to have caused or contributed to such condition.¹⁰ 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.¹¹ Causal relationships must be established by

⁶ *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

⁷ *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).

⁸ *Lucrecia M. Nielson*, *supra* note 6.

⁹ *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).

¹⁰ *See Theron J. Barham*, *supra* note 7.

¹¹ *See Victor J. Woodhams*, *supra* note 4.

rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.

The Board further finds that the Office properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

Under section 8128(a) of the Act,¹² the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,¹³ which provides that a claimant may obtain review of the merits if her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

(ii) Advances a relevant legal argument not previously considered by [the Office]; or

(iii) Constitutes relevant and pertinent new evidence not previously considered by the [Office].”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.¹⁴

In support of his request for reconsideration on August 1, 2001, appellant submitted several documents most of which were duplicative including a report from Dr. Schwartz dated April 8, 2000; a personal statement; and a notice of recurrence dated February 8, 1988. The record reflects that this information was previously considered by the Office in its decision dated July 3, 2001 and found to be insufficient. The Board has found that evidence that repeats or duplicates evidence already in the case record has not evidentiary value.¹⁵ Appellant also submitted a report from Dr. Godwin dated March 14, 1988; and a medical report from Dr. Dauhajre dated March 16, 1988. Dr. Godwin's report noted that appellant sustained an injury in 1974 when he fell getting out of a postal truck. He diagnosed appellant with osteoarthritis of both knees. The medical report from Dr. Dauhajre dated March 16, 1988 indicated that appellant had been treated since February 10, 1988. He noted that appellant would need surgical intervention and that he should be placed on light duty. However neither doctor provided an opinion regarding the causal relationship between appellant's bilateral knee condition and the factors of employment believed to have caused or contributed to such condition. Additionally, Dr. Godwin seemed to relate appellant's knee condition to a fall which

¹² 5 U.S.C. § 8128(a).

¹³ 20 C.F.R. § 10.606(b) (1999).

¹⁴ 20 C.F.R. § 10.608(b).

¹⁵ See *Daniel Deparini*, 44 ECAB 657 (1993).

occurred in 1974, however, this history appears to be contradictory to appellant's version of events as described in his personal statement and CA-2.¹⁶

Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did he submit relevant and pertinent evidence not previously considered by the Office."¹⁷ Therefore, appellant did not submit relevant evidence not previously considered by the Office.

The decisions of the Office of Workers' Compensation Programs dated October 16 and July 3, 2001 are hereby affirmed.

Dated, Washington, DC
September 26, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

¹⁶ See *Cowan Mullins*, *supra* note 9.

¹⁷ 20 C.F.R. § 10.606(b) (1999).