

On December 6, 1999 appellant, then a 50-year-old mail carrier technician, filed a traumatic injury claim alleging that on December 1, 1999 he hurt his right knee. While he was stepping off a truck, his foot slipped on loose rock causing him to twist his ankle and fall with all his weight on his right knee. Appellant's supervisor checked the box on the claim form under "filing instructions" indicating that this was a "no lost time injury with medical expenses

incurred or expected.” Appellant’s physician noted that appellant was partially disabled commencing December 6, 2006 and released him to full-time work on December 21, 1999.

On January 11, 2005 appellant submitted a duplicate copy of his 1999 claim form. Through his attorney, he submitted evidence on January 24, 2005, including an operative report dated September 1, 2000. On that date, appellant underwent an arthroscopy on his right knee, resection, medial plicial band and chondroplasty and medial femoral condyle performed by Dr. Frederick McClimans, an osteopath. By letter dated January 18, 2005, his attorney submitted an examination history for appellant from December 6, 1999 through December 23, 2004.

By letter dated May 31, 2005, the Office informed counsel that the claim was originally received in the Office as a simple, uncontroverted case, which was expected to result in minimal or no time loss from work. The Office explained that these cases are administratively accepted in a closed status to allow payments up to \$1,500.00 for treatment for up to 180 days. The Office forwarded a form for claiming a recurrence, noting that over five years had lapsed since the closure of this case.

In a medical report dated January 20, 2005, Dr. McClimans indicated that appellant initially saw him on August 22, 2000 complaining of bilateral knee pain. Appellant informed Dr. McClimans that he had a history of a fall in 1999. Dr. McClimans noted that appellant attributed his injury to his work at the employing establishment. He noted appellant’s chondroplasty and mentioned that in February 2001 appellant underwent a diagnostic arthroscopy of the left knee. Dr. McClimans indicated that at some point appellant might need further diagnostic arthroscopy with possible chondroplasty. In response to appellant’s question regarding his employment, Dr. McClimans told him that walking long distances, kneeling and squatting were activities that could result in a further aggravation of his knee condition.

By letter dated July 29, 2005, the Office accepted appellant’s claim for right knee contusion/abrasion, resolved, right knee strain, resolved and right ankle strain, resolved.

On July 21, 2005 appellant filed a claim alleging a recurrence of the December 1, 1999 employment injury on or about December 7, 1999. He indicated that he sought medical treatment and claimed lost wages for an unspecified period of time.

In a March 15, 2004 medical report, Dr. George M. Adams, a family practitioner, indicated that appellant, a federal mail carrier, had been treated in his office since July 6, 1996. He noted that appellant developed increasing problems in his shoulders and knees for which he had multiple surgeries. Carrying mail had become increasingly painful and that this aggravated pain in appellant’s shoulders, both his knees and to his low back. Dr. Adams noted that walking, standing, bending, lifting, carrying and handling involved in appellant’s job aggravated his situation and that he recommended that appellant apply for disability.¹

¹ In progress notes dated May 2, 2000 to July 26, 2001, Dr. Adams noted that he was treating appellant for knee, shoulder and low back pain and that appellant should not work more than 8 hours a day in a 40-hour workweek.

In an undated medical report received by the Office on July 26, 2005, Dr. McClimans indicated that appellant was currently being treated for chronic low back pain as well as numerous musculoskeletal conditions. He noted that appellant's job required him to lift heavy bags and that there was considerable walking and bending involved. These activities aggravated his lumbar spine as well as his left and right knee. Dr. McClimans opined that, because of appellant's numerous complaints to his back, he was a candidate for disability.

On July 21, 2005 appellant filed a claim for recurrence alleging a recurrence of his December 1, 1999 injury on December 7, 1999.

By decision dated September 6, 2005, the Office denied appellant's claim for recurrence because the evidence did not establish that his current medical condition was due to the accepted work injury.

In a medical report dated September 3, 2004, Dr. W. Lance McKittrick, a physician specializing in pain management, indicated that he was appellant's current treating physician. He stated:

"[Appellant] suffers from chronic pain in the lumbar spine secondary to a herniated disc, shoulders secondary to a rotator cuff tear that was repaired but continues to cause pain, knees, and elbows from tendinitis. These conditions cause mobility and strength limitations and require ongoing medical treatment (procedural injections and nerve blocks for pain control and medications) and physical limitations to prevent and limit further damage.

"In my opinion, [appellant] can no longer perform the functions of a mail carrier. Continuation of the duties he reports as being required will cause continued deterioration and aggravate his condition and further cause his disability."

Subsequent progress notes by Dr. McKittrick dated through March 5, 2005 reiterated his opinion that appellant could not work the functions of a mail carrier.

By letter dated August 2, 2005, the Office requested that appellant submit further information.

By decision dated September 6, 2005, the Office denied appellant's recurrence of disability claim finding that the evidence was not sufficient to establish that his current condition was due to the accepted work injury.

On October 20, 2005 appellant requested reconsideration. In addition to documents already in evidence, appellant submitted a statement dated August 30, 2005. Appellant indicated that he sustained an injury to his right knee and ankle in a fall while exiting a postal vehicle on December 1, 1999 and had experienced almost continuous pain and or discomfort in the right knee. He discussed his medical treatment and indicated that he was never returned to full duty after this incident.

In an August 29, 2005 report, Dr. Eaton Yen, an osteopath, stated:

“[Appellant] has been treated at Tampa Pain Relief Center since October 28, 2002. [His] diagnoses are low back pain, right lumbar facet arthropathy, right sacroiliac joint arthropathy, L5-S1 herniated nucleolus pulposus with radiculopathy, and lumbar degenerative disc disease. [Appellant] also suffers from right elbow, bilateral shoulder and knee pain. He is [status post] left rotator cuff repair. It has been slowly progressive without any specific accident.”

Dr. Yen listed appellant’s work restrictions and stated that continuance of appellant’s duties in excess of the restriction would “continue to aggravate and potentially worsen his condition.”

In a decision dated January 26, 2006, the Office denied modification of the September 6, 2005 decision.

On April 5, 2006 appellant requested reconsideration. He submitted a March 21, 2006 medical report from Dr. Rodolpho Gari, a Board-certified anesthesiologist with a subspecialty certificate in pain medicine. Dr. Gari indicated that appellant had been a patient of the Tampa Pain Relief Center since October 28, 2002. Appellant was treated for a multitude of musculoskeletal conditions, one of which was pain to the right knee. He noted a history of appellant falling in an accident on December 1, 1999 while working for the employing establishment which caused an injury to his right knee and ankle. After reviewing appellant’s medical history, Dr. Gari stated that appellant’s “injury to the right knee sustained in [December 1999] has been an ongoing problem since the accident and based on several physicians statements continues to require treatment [whether] it be surgery, therapy, injections or medication.”²

By decision dated May 10, 2006, the Office denied modification of the January 26, 2006 decision.

LEGAL PRECEDENT

A claimant seeking compensation under the Federal Employees’ Compensation Act³ has the burden of establishing the essential elements of his claim by the weight of the substantial,

² The Board notes that appellant submitted reports by nurse practitioners and physician’s assistants. However, nurse practitioners and physician’s assistants are not physicians under the Act. Accordingly, their opinions are of no probative value. *Merton J. Sills*, 39 ECAB 572, 575 (1988).

³ 5 U.S.C. §§ 8101-8193.

reliable and probative evidence.⁴ In this case, appellant has the burden of establishing that he sustained a recurrence of disability causally related to his December 1, 2006 injury.⁵

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted injury. The burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.⁶

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.⁷ Where no such rationale is present, the medical evidence is of diminished probative value.⁸ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incident is sufficient to establish a causal relationship.⁹

ANALYSIS

In the instant case, appellant has not submitted sufficient medical evidence to establish that he sustained a recurrence of disability. On December 6, 1999 appellant filed a claim alleging that he sustained a traumatic injury to his right knee on December 1, 1999 while stepping off a truck. Initially, the Office treated it as a simple, uncontroverted case which was expected to result in minimal or no time loss from work. In fact, appellant submitted no evidence between December 20, 2000 and January 11, 2005. In response to his inquiry in 2005, on July 29, 2005 the Office accepted appellant's claim for right knee contusion/abrasion, resolved; right knee strain, resolved; and right ankle strain, resolved. Appellant, however, retains the burden of proof to establish periods of disability due to his right knee condition.

⁴ *Joan R. Donovan*, 54 ECAB 615 (2003).

⁵ Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. 20 C.F.R. § 10.5(x); *see also* 20 C.F.R. § 10.104(b).

⁶ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁷ *See Joan R. Donovan*, *supra* note 2; *see also John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁸ *Mary A. Ceglia*, 55 ECAB ____ (Docket No. 04-113, issued July 22, 2004).

⁹ *Dennis M. Mascarenas*, 40 ECAB 215, 218 (1997).

On July 21, 2005 appellant filed a claim alleging a recurrence of the December 1, 1999 employment injury on or about December 7, 1999. He has not submitted sufficient rationalized medical evidence addressing specific periods of disability to the right knee injury. The Office accepted appellant's claim for right knee contusion/abrasion, right knee strain and right ankle strain, all of which had resolved. No physician submitted a rationalized opinion addressing bridging symptoms recurrence and the accepted injury.

Dr. McClimans, appellant's surgeon, noted that he had been treating appellant since August 22, 2000 for bilateral knee pain. Accordingly, Dr. McClimans did not see appellant until over eight months after the employment-related fall. Although he noted that appellant sustained a fall in 1999, Dr. McClimans never provided a medical opinion relating this fall to the injuries for which he treated appellant. All he noted was that appellant attributed his injury to his work at the employing establishment. Dr. McClimans never provided a medical opinion regarding causal relationship or addressing how the surgery performed on September 1, 2000 was caused or contributed to by the accepted fall. His opinion does not establish that appellant sustained a recurrence of disability.

Dr. Adams noted that he treated appellant since July 6, 1996. Accordingly, his treatment of appellant began prior to his December 1, 1999 fall. Dr. Adams noted that over the years appellant developed problems with his shoulders and knees for which he needed multiple surgeries. He noted that walking, standing, bending, lifting, carrying and handling mail aggravated appellant's condition. Dr. Adams addressed appellant's work duties in general and did not attribute the right knee condition to the December 1, 1999 fall.

Dr. McKitrick opined that appellant had chronic pain the lumbar spine secondary to a herniated disc. He provided no opinion at all with regard to whether the December 1, 1999 fall caused any injury.

In an August 29, 2005 report, Dr. Yen noted that appellant had numerous conditions including knee pain, which he found to have been "slowly progressive without any specific incident." Accordingly, Dr. Yen's opinion does not support appellant's assertions that he sustained injury as a result of the December 1, 1999 employment-related fall.

In a March 21, 2006 report, Dr. Gari addressed appellant's course of treatment since October 28, 2002. He noted the history of the December 1, 1999 work incident and opined that appellant's injury to the right knee sustained in December 1999 had been an ongoing problem since the accident, based on several physicians' statements, and continued to require treatment. However, Dr. Gari did not provide an explanation addressing how appellant's accepted contusion and abrasion of the right knee contributed to the need for surgery in 2000 or continuing medical care.

Many physicians' noted appellant's work at the employing establishment and the fact that his work as a mail handler aggravated his condition. However, a recurrence of disability is defined as a spontaneous change in medical condition which resulted from a previous injury or illness without intervening or new exposure to the work environment that caused the illness.¹⁰

¹⁰ 20 C.F.R. § 10.5(x); *see also* Carlos A. Marero, 50 ECAB 117 (1998).

Accordingly, if appellant attributes his knee condition as a result of his continuing employment, he should file a new claim. The evidence of record does not establish that appellant sustained any spontaneous recurrence of disability on or after December 7, 1999.

Accordingly, the Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of his December 1, 1999 accepted employment injury.

CONCLUSION

The Board finds that appellant has not established a recurrence of his December 1, 1999 employment injury on or about December 7, 1999.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 10 and January 26, 2006 are hereby affirmed.

Issued: October 31, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board