United States Department of Labor
Employees' Compensation Appeals Board

A.T., Appellant	)	
and	)	**Docket No. 07-1680**
	)	**Issued: December 28, 2007**
DEPARTMENT OF THE ARMY, ARMY CORP OF ENGINEERS, Memphis, TN, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 7, 2007 appellant timely filed an appeal[1] of a May 14, 2007 merit decision of the Office of Workers' Compensation Programs which denied his traumatic injury claim. He also timely appealed the Office's May 31, 2007 nonmerit decision denying his request for reconsideration on the grounds that the evidence submitted was insufficient to require a merit decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3 the Board has jurisdiction to review the merits of appellant's claim.

ISSUES

The issues are: (1) whether appellant sustained a traumatic injury in the performance of duty; and (2) whether the Office properly refused to reopen his case for further review of the merits of his claim on the grounds that he did not provide any additional evidence or legal argument to establish that he sustained a traumatic injury.

[1] Additional medical evidence was submitted with appellant's appeal to the Board. The Board cannot consider new evidence on appeal.

FACTUAL HISTORY

On October 30, 2006 appellant, then a 39-year-old administrative support assistant, filed a traumatic injury claim alleging that on October 28, 2006 when he flushed a urinal in the restroom it "exploded" blowing waste and other particles all over the place at which time he jumped back and landed on his left leg causing severe pain in his knee. The employing establishment responded on his claim form that he was "not authorized to work overtime on Saturday."

Medical information was submitted. An October 30, 2006 medical clinic note with an illegible signature stated that appellant complained of pain in his left knee due to an over the weekend injury when he jumped back at work. In an October 30, 2006 note, Dr. Daniel Scott, Board-certified in family practice, stated that appellant would return to work on November 6, 2007. A magnetic resonance imaging scan of the left lower extremity performed on November 8, 2006 revealed an eight by six millimeter chondral defect involving the inner aspect of the medial femoral condyle. A November 28, 2006 attending physician's report, with an illegible signature, diagnosed appellant with osteochondral defect and stated that he presented with a history of knee pain. The report also contained a checked box marked "yes" stating that the injury was caused by an employment activity.

On November 20, 2006 the Office requested additional factual and medical evidence from appellant. Appellant responded on November 29, 2006 stating that he was in the office on October 28, 2006 to finish up some filing and that he had special permission. Additional medical documentation was also submitted. In a November 3, 2006 note, Dr. W. Knight stated that appellant twisted his knee after the toilet exploded, but stated that he was doing well and opined that "I do [not] think that this little episode of injury is of any significance." In a November 3, 2006 employment report, he diagnosed osteoarthritis. In a December 5, 2006 note, appellant's supervisor stated that appellant did not request advance approval, however, he had worked overtime without permission before and that, if appellant had asked and had a valid reason for weekend work the supervisor would have granted his request. In a December 11, 2006 note, Dr. Scott stated that the specialist found osteochondral fracture and recommended that appellant remained off work until January 22, 2007.

On January 5, 2007 the Office denied appellant's claim on the grounds that the evidence did not establish that he was injured in the performance of duty finding that appellant did not have permission to work on Saturday, October 28, 2006 and his normal scheduled workdays were Monday to Friday.

On January 19, 2007 appellant requested a review of the written record. Additional documents were submitted, including an illegible copy of an injury. He also submitted a December 26, 2006 claim for wage-loss compensation for the period December 14, 2006 through January 22, 2007. In a March 2, 2007 physician's report, Dr. Joseph Zehner diagnosed osteochondral fracture defect of the left knee and fat pad syndrome and stated that appellant was scheduled for arthroscopy on March 12, 2007. A March 2, 2007 progress note stated that appellant reported no change in pain in left knee. On January 17, 2007 a magnetic resonance imaging (MRI) scan of the left knee was performed revealing that appellant was stable compared

to the November 8, 2006 MRI scan with no change in the chondral defect involving the medial femoral condyle.

On May 14, 2007 the Office affirmed and modified the prior decision finding that appellant was in the performance of duty at the time of the incident but that the medical evidence was insufficient to support a causal relationship between the accepted work incident and the diagnosed condition.

On May 23, 2007 appellant requested reconsideration and submitted two requests for overtime.

On May 31, 2007 the Office issued a nonmerit decision denying appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing that 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 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.[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 determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

ANALYSIS -- ISSUE 1

Appellant alleged that he sustained a left knee condition when he jumped backwards in the restroom at work on October 28, 2006. The Office accepted that the October 28, 2006 employment incident occurred as alleged in the performance of duty. The issue is whether the accepted incident caused appellant's diagnosed left knee osteochondral defect. The Board finds

[2] 5 USC §§ 8101-8193.

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

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

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

[6] *Id.* For a definition of the term traumatic injury, see 20 C.F.R. § 10.5(ee). For a definition of the term occupational disease or illness, see 20 C.F.R. § 10.5(g).

that the medical evidence fails to establish the requisite causal relationship between the accepted incident and appellant's diagnosed condition.

The Board has previously held that a physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. 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 the claimant's specific employment factors.[7] The medical evidence submitted is insufficient to support causal relationship. In his October 30, 2006 note, Dr. Scott indicated that appellant could return to work on November 6, 2007; however, he did not provide a history of injury, diagnosis or any opinion regarding causal relationship between the alleged condition and the employment incident. Similarly, in his November 3, 2006 note, Dr. Knight noted that appellant had twisted his knee in the bathroom, but opined that this episode was of no significance. Dr. Knight's report is therefore insufficient to establish that appellant sustained a condition causally related to the accepted incident. The November 28, 2006 attending physician's report from an unidentified doctor diagnosed osteochondral defect and reported that appellant had a history of knee pain but does not contain an opinion on causal relationship. While the form report did contain a checked "yes" box stating that the injury was caused by the employment activity, merely a check mark is insufficient to establish the claim, as the Board has held that without, further explanation or rationale, a checked box is not sufficient to establish causation.[8] The March 2, 2007 report from Dr. Zehner diagnosed osteochondral fracture defect, but did not provide an opinion on causal relationship. There is no evidence that appellant's diagnoses osteochondral defect is causally related to the October 28, 2006 employment incident.

The Board finds that appellant has failed to meet his burden to demonstrate that he sustained an employment-related injury on October 28, 2006.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act[9] does not entitle a claimant to a review of an Office decision as a matter of right.[10] The Act does not mandate that the Office review a final decision simply upon request by a claimant.[11]

To require the Office to reopen a case for merit review under section 8128 (a) of the Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument

[7] *Victor J. Woodhams, supra* note 4.

[8] *Anna C. Leanza*, 48 ECAB 115 (1996).

[9] 5 U.S.C. §8128(a).

[10] *Darletha Coleman*, 55 ECAB 143 (2003).

[11] *Donna M. Campbell*, 55 ECAB 241 (2004).

not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[12]

ANALYSIS -- ISSUE 2

The Office is required to reopen a case for merit review if an application for reconsideration demonstrates that it erroneously applied a specific point of law, puts forth relevant and pertinent new evidence or presents a new relevant legal argument. Appellant did not argue that the Office erroneously applied a point of law. He submitted evidence that was new but it was not relevant and pertinent. The only evidence submitted after the merit decision was two overtime request forms. The Office had, however, previously accepted that appellant was in the performance of duty at the time of the alleged injury. The evidence submitted did not address the issue of whether appellant sustained an injury at work and is therefore not relevant. As he did not submit any relevant and pertinent new evidence he is not entitled to merit review by the Office.

CONCLUSION

The Office properly denied appellant's traumatic injury claim and denied merit review.

[12] 20 C.F.R. § 10.606(b)(2)(iii) (2004).

ORDER

IT IS HEREBY ORDERED THAT the May 31 and 14, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 28, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board