

**United States Department of Labor
Employees' Compensation Appeals Board**

J.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Media, PA, Employer**

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**Docket No. 06-1773
Issued: January 29, 2007**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant
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 July 28, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 17, 2006 merit decision denying his claim for an employment-related left knee condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a left knee injury in the performance of duty.

FACTUAL HISTORY

On November 14, 2005 appellant, then a 43-year-old letter carrier, filed an occupational disease claim alleging that he sustained a left knee injury due to his work. Regarding the cause of the injury, he stated, "November 8th and 9th I had a pain behind left knee while delivering but thought it would go away. Thursday November 10, 2005 while delivering the pain progressed throughout entire knee. Friday a.m. woke up with swelling." Appellant stopped work on

November 10, 2005 but began performing light-duty work for the employing establishment shortly thereafter.¹

On November 15, 2005 appellant first visited Dr. William D. Emper, a Board-certified orthopedic surgeon, who indicated that he reported developing acute pain and swelling of the left knee after walking “one day” in the prior week. Examination of appellant’s left knee revealed 1+ effusion and positive medial joint line tenderness. Dr. Emper posited that appellant might have a tear of the medial meniscus of the left knee and recommended that he limit his walking, bending and squatting and undergo magnetic resonance imaging (MRI) scan testing.² In a form report dated November 17, 2005, he listed the history of injury as “onset of left knee pain after walking route last week,” diagnosed torn medial meniscus of the left knee and determined that appellant’s tear was caused by walking his route. Dr. Emper indicated that appellant was partially disabled beginning November 15, 2005.³

In a December 2, 2005 note, Dr. Emper stated that appellant reported symptoms of a large effusion and tender medial joint line of the left knee while walking his route on November 10, 2005. He indicated that this caused his “expected” medial meniscus tear and recommended MRI scan testing. In a December 20, 2005 note, Dr. Emper indicated that appellant reported acute onset of left knee pain after walking his postal delivery route in early November 2005. He indicated that this was considered to be a work-related injury.

By decision dated December 23, 2005, the Office denied appellant’s claim on the grounds that he did not submit rationalized medical evidence showing that he sustained a left knee injury due to the implicated employment factors.

On February 16, 2006 appellant underwent MRI scan testing of the left knee which showed a suspected small vertical tear along the inner margin of the posterior horn of the medial meniscus. This finding was seen on a single coronal image and therefore was considered “somewhat equivocal.” In a March 2, 2006 note, Dr. Emper maintained that these findings showed that appellant had a left medial meniscus tear which was work related.

Appellant began to receive treatment for his left knee condition from Ronald N. Rosenfeld, an osteopath and Board-certified orthopedic surgeon. In several form reports and notes dated beginning in February 2006, Dr. Rosenfeld listed the date of injury as October 10, 2005 and indicated that appellant’s left medial meniscus tear was due to the injury.

Appellant also submitted several documents regarding a right ankle injury he sustained on November 9, 2005. In a form report dated November 9, 2005, an emergency room physician at the Frankford Hospital indicated that appellant presented on November 9, 2005 indicating that he “lost footing on step and fell into and also twisted his right ankle.” The physician, whose

¹ Appellant’s claim bears the file number 03-2044442.

² The record also contains a November 12, 2005 note in which a physician with an illegible signature from the Marple Commons Medical Group provided the notation “arthritis left knee -- acute flare, limiting walking.”

³ A November 15, 2005 form report of Dr. Emper also provided work restrictions and indicated that appellant’s medial meniscus tear was due to a November 10, 2005 injury.

signature is illegible, diagnosed right ankle sprain and contusion. A November 9, 2005 admission form indicates that appellant stated that he only felt a little “twinge” in his right ankle and could walk on it. The Board notes that this condition falls under a separate Office claim file number 03-2043999 and is not the subject of the present appeal.⁴

In a June 14, 2006 report, Dr. Emper stated that when he first saw appellant on November 15, 2005 he reported that he developed pain and swelling in his left knee after walking his route one week prior to the office visit. He indicated that he referred appellant for MRI scan testing on February 16, 2006 which showed a tear of the posterior horn of the medial meniscus. Dr. Emper stated:

“Although he did not state that he experienced a twisting type injury while working his route his job occupation is very physical. He has to lift large hampers of mail approximately 3 feet high, loaded with weight ranging from 50 [to] 150 pounds. He walks his route that usually takes about five hours per day. It is my opinion that his meniscal tears can occur with activities such as this without the patient experiencing a definitive twisting injury. Because of the extensive nature of his physical activity and the fact that he had no prior history of discomfort in his knee, it is my opinion that this meniscal tear is a work-related injury.”

Appellant requested an oral hearing before an Office hearing representative but later requested that he receive a review of the written record. By decision dated and finalized July 17, 2006, the Office hearing representative affirmed the Office’s December 23, 2005 decision as modified to reflect that appellant’s claim was denied on the basis that he had not established the factual aspect of his claim. The Office hearing representative indicated that appellant’s apparent failure to report the October 9, 2005 right ankle injury to the physicians treating his left knee condition created a significant inconsistency.

LEGAL PRECEDENT

An employee who claims benefits under the Federal Employees’ Compensation Act⁵ has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁶ An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee’s statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁷ An employee has not met his burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁸

⁴ Appellant did not stop work in connection with his right ankle condition.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

⁷ *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

⁸ *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.⁹ However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹⁰

An employee seeking benefits under the Act has the burden of establishing the essential elements of his 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 specific condition for which compensation is claimed are causally related to the employment injury.¹¹ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹²

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) a 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 a causal relationship is 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.¹³ 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.¹⁴

⁹ *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

¹⁰ *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

¹¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

¹² *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

¹³ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

¹⁴ *Id.*

ANALYSIS

Appellant alleged that he sustained a knee injury due to performing his mail carrier duties on November 8, 9 and 10, 2005. The Office denied appellant's claim on the grounds that there were such inconsistencies in the factual evidence that he had not established the occurrence of employment factors as alleged.

The Board finds that appellant has established the factual aspect of his claim in that he has shown the existence of employment factors which he believed caused his left knee condition, *i.e.*, delivering mail on November 8, 9 and 10, 2005. He consistently asserted that he sustained his left knee injury due to walking while delivering mail on November 8, 9 and 10, 2005. Appellant indicated that his left knee pain became progressively worse over the course of these days. He stopped work on November 10, 2005, first sought medical treatment for his left knee condition on November 12, 2005, and filed his compensation claim on November 14, 2005. The fact that appellant apparently failed to report a October 9, 2005 right ankle injury to the physicians treating his left knee condition does not create a significant inconsistency in the factual record. It appears from the record that the right ankle injury was minor and did not require work stoppage. Appellant's left knee symptoms began prior to his right ankle injury, and it would be reasonable for appellant to conclude that the October 9, 2005 event did not contribute to his left knee condition. An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and there is no strong or persuasive evidence to refute appellant's assertion that his left knee injury occurred due to walking while delivering mail on November 8, 9 and 10, 2005.

The Board finds, however, that appellant did not establish his claim because he did not submit sufficient medical evidence to show that he sustained a left knee injury due to the accepted employment factors, *i.e.*, walking while delivering mail on November 8, 9 and 10, 2005.¹⁵

In a June 14, 2006 report, Dr. Emper, an attending Board-certified orthopedic surgeon, stated that when he first saw appellant on November 15, 2005 he reported that he developed pain and swelling in his left knee after walking his route one week prior to the office visit. He indicated that he referred appellant for MRI scan testing on February 16, 2006 which showed a tear of the posterior horn of the medial meniscus. Dr. Emper discussed various duties of appellant's job and stated that the "extensive nature of his physical activity and the fact that he had no prior history of discomfort in his knee" showed that his left medial meniscus tear was work related.

This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Emper did not provide adequate medical rationale in support of his conclusion on causal relationship.¹⁶ He did not clearly attribute appellant's left knee problem to the specific

¹⁵ See *supra* note 13 and accompanying text.

¹⁶ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

employment factors implicated by appellant, *i.e.*, walking while delivering mail on November 8, 9 and 10, 2005. Dr. Emper appears to have related appellant's left knee condition to events which occurred over a much longer period of time and his recitation of appellant's duties includes actions (such as lifting large hampers of mail weighing up to 150 pounds) that appellant has not implicated or established as factual.

Moreover, Dr. Emper has not provided a detailed description of the mechanism of the claimed injury. The basis for Dr. Emper's diagnosis of left medial meniscus tear is not entirely clear. The MRI scan testing of February 16, 2006 only showed a suspected left medial meniscus tear. Dr. Emper previously suggested that he obtained MRI scan testing in mid November 2006 but the record does not contain a report of such testing. Dr. Emper appears to have relied heavily on appellant's reported lack of prior symptoms, but the Board has held that the fact that a condition manifests itself or worsens during a period of employment¹⁷ or that work activities produce symptoms revelatory of an underlying condition¹⁸ does not raise an inference of causal relationship between a claimed condition and employment factors.

In several brief reports dated in November and December 2005, Dr. Emper posited that appellant sustained a left medial meniscus tear due to walking his delivery route on November 10, 2005 or walking his route in "early November 2005." However, he did not provide any medical rationale for his opinion on causal relationship in these reports. In several form reports and notes dated beginning in February 2006, Dr. Rosenfeld, an osteopath and Board-certified orthopedic surgeon, listed the date of injury as October 10, 2005 and indicated that appellant's left medial meniscus tear was due to this injury. His reports contain no medical rationale on the issue of causal relationship and therefore would not be sufficient to establish appellant's claim.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a left knee injury in the performance of duty. He established the occurrence of employment factors, but did not establish that he sustained a left knee injury due to the accepted factors.

¹⁷ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹⁸ *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' July 17, 2006 and December 23, 2005 decisions are affirmed.

Issued: January 29, 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