United States Department of Labor
Employees' Compensation Appeals Board

C.M., Appellant	)	
and	)	**Docket No. 07-1011**
	)	**Issued: October 12, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Los Angeles, CA, Employer	)	

Appearances:
Minnette Diane Turner, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 5, 2007 appellant filed a timely appeal from a November 7, 2006 decision of the Office of Workers' Compensation Programs which denied his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an employment-related injury on February 2, 2005.

FACTUAL HISTORY

On February 3, 2005 appellant, then a 49-year-old letter carrier, filed a Form CA-1, traumatic injury claim, alleging that on February 2, 2005 he felt his left knee pop while he was walking to his delivery vehicle. It then became swollen. Appellant did not immediately stop work. In an attached statement, he noted that while he initially felt some stiffness, he continued his delivery route and did not report the injury until the next morning. Dr. Gordon Van Tassell, an osteopath, provided a disability slip dated February 3, 2005, in which he advised that

appellant could return to modified duty that day. He stated that appellant told him his knee popped and the physician diagnosed a knee sprain.

By letter dated February 14, 2005, the Office informed appellant of the evidence needed to develop his claim. In a February 10, 2005 report, Dr. Jimmie S. Kung, a Board-certified physiatrist, advised that appellant was totally disabled for 6 days beginning February 10, 2005 and should thereafter work modified duty for 21 days. In a February 11, 2005 report, he diagnosed a left medial collateral ligament strain, rule-out meniscal tear. Dr. Hung continued to advise that appellant should work modified duty.

On February 22, 2005 the employing establishment controverted the claim. It advised that appellant stopped work on February 4, 2005 and returned on February 16, 2005 and received continuation of pay for this period.

In an April 1, 2005 decision, the Office denied the claim finding that the medical evidence did not establish that appellant's knee injury was caused by the claimed employment incident.

On October 10, 2005 appellant requested reconsideration and submitted a left knee magnetic resonance imaging (MRI) scan dated March 22, 2005 that demonstrated a complex tear of the posterior horn of the medial meniscus and small associated joint effusion. Dr. Kung submitted additional reports in which he noted the MRI scan findings, recommended surgery and advised that appellant should continue modified duty. In a May 17, 2005 report, he noted a history of injury that appellant fell while at work on February 2, 2005 and that his job required walking back and forth to his truck to deliver mail. Dr. Hung advised that appellant had chronic, recurrent pain in the left knee. In a June 21, 2005 report, he advised that prolonged walking, standing and bending could aggravate appellant's chronic knee pain, noting that appellant reported a history that he had to frequently climb on and off his postal vehicle for five hours a day.

By decision dated October 21, 2005, the Office denied modification of the April 1, 2005 decision. The Office noted that the medical evidence indicated that appellant's injury was caused by cumulative work events and was not a traumatic injury.

On August 3, 2006 appellant requested reconsideration. He submitted a November 29, 2005 report in which Dr. Kung advised that his knee injury "did occur during the course of his usual and customary job duties and does represent a work-related injury." In reports dated January 31, May 2, June 22 and August 22, 2006, Dr. Kung reiterated his findings and conclusions. Dr. Ali A. Dini, a Board-certified orthopedic surgeon, provided reports dated February 14, 2006, in which he noted appellant's complaint of constant knee pain and his reported history that on February 2, 2005 he twisted his left knee and felt it pop. He noted physical findings of tenderness and a positive MRI scan and diagnosed a torn meniscus of the left knee with synovitis. Dr. Dini recommended arthroscopic surgery and modified duty and opined that these were compatible with the history of injury. He continued to submit reports in which he reiterated his findings and conclusions.

On November 7, 2006 the Office denied modification of the October 21, 2005 decision. The Office accepted that appellant walked down a driveway on February 2, 2005. It noted that the medical evidence seemed to support that appellant's knee injury occurred over time and was not due to the February 2, 2005 incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[2]

Office regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[3] To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[4]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[5] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.[6] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the

[1] 5 U.S.C. §§ 8101-8193.

[2] *Gary J. Watling*, 52 ECAB 278 (2001).

[3] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

[4] *Gary J. Watling*, *supra* note 2.

[5] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[6] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[7]

ANALYSIS

The Board notes that the February 2, 2005 employment incident occurred, as alleged. Dr. Dini noted positive MRI scan findings and diagnosed a torn meniscus of the left knee. Dr. Kung, an attending physiatrist submitted a number of reports in which he diagnosed a left medial collateral ligament strain, rule-out meniscal tear. He advised that appellant was totally disabled for six days beginning February 10, 2005 and thereafter should work modified duty. Following a March 22, 2005 MRI scan that demonstrated a complex tear of the posterior horn of the medial meniscus and small associated joint effusion, Dr. Kung recommended surgery. On November 29, 2005 the physician advised that appellant's knee injury occurred "during the course of his usual and customary job duties" and was therefore a work-related injury. Although Dr. Kung's reports lack adequate medical rationale sufficient to discharge appellant's burden of proof to establish by the weight of reliable, substantial and probative evidence that his left knee condition was causally related to the February 2, 2005 work incident, this does not mean that they may be completely disregarded by the Office.

Dr. Kung's reports are sufficient to establish a *prima facie* case such that the Office should further develop the record to determine if the diagnosed left medial meniscal tear was caused by appellant's federal employment.[8] It is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[9] The case will be remanded to the Office to further develop the medical evidence to determine if appellant's diagnosed left knee condition was caused or aggravated by the February 2, 2005 employment incident and, if so, whether appellant had any disability there from.[10] After this and such further development deemed necessary, the Office shall issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for decision. The case is remanded to the Office for further development.

[7] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[8] *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *See Jimmy A. Hammons, id.*

[10] *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 7, 2006 be set aside and the case remanded to the Office for further action consistent with this opinion.

Issued: October 12, 2007
Washington, DC

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

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

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