United States Department of Labor
Employees' Compensation Appeals Board

D.H., Appellant	)	
and	)	**Docket No. 08-281**
	)	**Issued: November 19, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Norwood, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 5, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 14, 2007, affirming the denial of his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established a right knee injury causally related to his federal employment on July 27, 2006.

FACTUAL HISTORY

On August 23, 2006 appellant, then a 55-year-old distribution window clerk, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right knee injury on August 3, 2006. He stated that he was lifting and distributing parcels when his knee became painful. In a narrative statement received by the Office on November 29, 2006, appellant described distributing parcels, which required bending, lifting and turning. Appellant stated that

he was distributing a 20-pound parcel when he felt pain in his right leg. He told his supervisor and, later that afternoon, was treated by his family physician. A supervisor, Mr. Deerman, submitted an undated statement that on August 3, 2006 appellant told him that his knee was hurting.

With respect to medical evidence, the record contains an August 3, 2006 report from Dr. Thomas Mueller, a family practitioner.[1] He reported appellant had "about a week long history of soreness in his right knee." Dr. Mueller diagnosed right knee strain, with possible cartilage tear. Appellant was seen by Dr. John Schwegmann, an orthopedic surgeon, on August 23, 2006. The history provided was approximately a month of knee pain, with appellant recalling a day at work when did he perform turning and twisting, and it felt like a strain. An magnetic resonance imaging (MRI) scan dated September 5, 2006 revealed tricompartmental osteoarthritis with large tears in the posterior horn of the medial and lateral menisci.

In a report dated December 8, 2006, Dr. Schwegmann stated that appellant sustained an injury on August 3, 2006 while performing his distribution duties of packing, lifting and moving packages. He stated that appellant felt an immediate onset of knee pain and it was found that appellant had mensical tears.

By decision dated December 15, 2006, the Office denied appellant's claim for compensation, finding the medical evidence was insufficient to establish the claim.

Appellant requested a review of the written record and submitted a narrative statement on January 24, 2007. He stated that there had been confusion regarding the date of injury and the actual date was July 27, 2006 at approximately 6:30 a.m. Appellant indicated that he originally thought the injury date was August 3, 2006, but he had the wrong week.

In a report dated January 21, 2007, Dr. Schwegmann stated that when appellant was first treated he described a work-related injury that occurred while twisting and lifting boxes. He stated that the meniscal tears were established by the MRI scan. Appellant also had tricompartmental osteoarthritis, "which I do not contribute to his work-related injury as described, but his condition is now aggravated by what he describes as this turning injury at work."

By decision dated May 14, 2007, the hearing representative affirmed the denial of the claim. The hearing representative found there were inconsistencies regarding the occurrence the alleged incident.

[1] The report was transcribed on August 4, 2006, and also contains an unexplained date of July 29, 2006 at 12:00 a.m.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing that he or she sustained an injury while in the performance of duty.[3] In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[4]

The Office's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.[5] In clear cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.[6]

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[7]

ANALYSIS

The Office hearing representative found that appellant did not establish the first component of fact of injury, as there were inconsistencies in the record. As noted, the question is whether appellant actually experienced the alleged incident. Although, he initially stated the injury occurred on August 3, 2006, he subsequently noted that he misstated the date by a week

[2] 5 U.S.C. §§ 8101-8193.

[3] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

[4] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

[6] *Id.*

[7] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

and the actual date was July 27, 2006. This would be consistent with the initial report from Dr. Mueller on August 3, 2006, who reported appellant had knee pain for approximately a week.[8] There is no evidence of record indicating appellant was not at work on July 27, 2006 or evidence refuting appellant's statement that he was distributing parcels on that date and felt pain in his right knee.[9]

The deficiency in the claim is in the medical evidence. There must be a rationalized medical opinion, based on a complete and accurate history, on causal relationship between a diagnosed condition and the employment incident on July 27, 2006. Dr. Mueller did not provide an opinion on causal relationship. Dr. Schwegmann did not provide a rationalized medical opinion based on an accurate history. He did not provide any description of a July 27, 2006 incident but had relied on the history of an incident on August 3, 2006. In addition, he provided no medical rationale explaining how the employment incident would cause meniscal tears, aggravation of osteoarthritis or any other diagnosed condition. It is appellant's burden of proof to establish the claim, and he did not meet his burden in this case.

CONCLUSION

Appellant did not meet his burden of proof to establish a right knee injury in the performance of duty on July 27, 2006.

[8] While there is some confusion about the date of this report, the report as a whole supports an August 3, 2006 treatment date.

[9] An employee's statement regarding an incident is of great probative value and will stand unless refuted by persuasive evidence. *Allen C. Hundley*, 53 ECAB 551 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 14, 2007 is affirmed.

Issued: November 19, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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