United States Department of Labor
Employees' Compensation Appeals Board

K.L., Appellant	)	
and	)	**Docket No. 08-1386**
	)	**Issued: November 6, 2008**
U.S. POSTAL SERVICE, GOLDEN GATE STATION, San Francisco, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 10, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated August 16, 2007 and January 28, 2008, finding that he did not sustain an injury on March 20, 2006 in the performance of duty, and a March 27, 2008 decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a right knee injury on March 20, 2006 in the performance of duty; and (2) whether the Office properly denied appellant's request for a merit review of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 20, 2006 appellant, then a 51-year-old city carrier, filed a traumatic injury claim alleging that on that date he experienced pain in his right knee. He stated that nothing caused his pain. Appellant stopped work on the date of injury.

Appellant submitted a March 20, 2006 medical report of Dr. William R. Tomkiewicz, a Board-certified internist, who stated that appellant sustained an injury on that date. Dr. Tomkiewicz ruled out a meniscal tear. He stated that appellant was disabled for work from March 20 through 23, 2006.

In a March 23, 2006 letter, the employing establishment controverted the claim. It stated that appellant sustained prior knee and leg injuries as a result of being hit by a car in a non-industrial accident in early 2005. The employing establishment also contended that the medical evidence of record was insufficient to establish appellant's claim. In a March 21, 2006 narrative statement, Nancy Atkinson, a manager, related that at approximately 2:00 p.m. on March 20, 2006 appellant called the office from his route about his right knee pain. A supervisor went out to see him to determine what happened. Appellant advised that he was walking when he experienced pain in his right knee. He continued to deliver mail and called the office when it worsened. When appellant returned to the office he changed his story by stating that he felt pain in his knee as he was walking up stairs. He made two additional deliveries before the pain increased and he called the office. As to why it took him almost one hour between the time he experienced pain and when he called the office, appellant related that he rested first. Ms. Atkinson noted a prior knee injury due to the 2005 car accident and appellant's subsequent return to light-duty work for over four months. Appellant advised her that he sustained both knee and leg injuries as a result of the accident. She related that appellant was incapacitated and put off work for three days. In a March 22, 2006 narrative statement, Anthony Viray, appellant's supervisor, related that after he explained an employee's rights and responsibilities regarding the filing of claims for a traumatic injury and continuation of pay compensation, appellant considered this information and insisted on taking sick leave rather than filing a claim for compensation.

By letter dated March 29, 2006, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional factual and medical evidence.

In an April 13, 2006 report, Dr. Christina Yu Ting Wang, Board-certified in occupational medicine, stated that appellant sustained a right knee sprain and could return to full-duty work on that date.

By decision dated May 8, 2006, the Office denied appellant's claim on the grounds that he did not establish that the claimed employment incident occurred at the time, place and in the manner alleged or that he sustained a medical condition causally related to the alleged incident.

By letter dated January 9, 2007, appellant requested reconsideration. He described the March 20, 2006 incident, noting that approximately 1:30 p.m., he was climbing the stairs to deliver mail when he felt pain in his right knee. The pain worsened as appellant continued walking on his route. Eventually he was unable to walk and called his supervisor. Appellant stated that he had been experiencing pain in his right knee for approximately six years but had not filed a claim for this condition. He believed that his knee condition developed while working as a letter carrier for 13 years. Appellant stated that he worked an average of five to six days per week, 10 or more hours per day. He carried heavy mail daily and climbed a lot of hills and stairs. Appellant walked six to seven hours per day and stood on his feet all day long. He called Mr. Viray, who drove him back to the office to fill out forms. Mr. Viray took appellant to the

emergency room for treatment. Appellant stated that in February 2005 he was struck by a car after work. The car struck his left knee and he was thrown and landed on the car before he fell to the ground. Appellant contended that his right knee was not affected by the car accident.

On April 13, 2006 Dr. Wang reiterated his diagnosis of right knee sprain. She ruled out internal derangement and stated that appellant had a possible lateral meniscus tear. Dr. Wang stated that appellant could return to full-duty work on April 13, 2006. In a March 24, 2006 report, Dr. Tomkiewicz opined that appellant sustained a right knee strain and possibly a meniscal injury that were work related.

By decision dated April 5, 2007, the Office affirmed the May 8, 2006 decision, as modified. It found the evidence sufficient to establish that the March 20, 2006 incident occurred at the time, place and in the manner alleged. However, the medical evidence was insufficient to establish that appellant sustained a medical condition causally related to the March 20, 2006 incident.

On June 3, 2007 appellant requested reconsideration. He submitted medical reports dated March 23, 2006 to May 7, 2007 from Dr. Wang, who reiterated that appellant sustained a right knee sprain/strain. Dr. Wang stated that he could return to full-duty work with no restrictions as of April 19, 2007.

By decision dated August 16, 2007, the Office denied modification of the April 5, 2007 decision. It found the medical evidence of record insufficient to establish that appellant sustained an injury causally related to the March 20, 2006 employment incident.

On November 11, 2007 appellant requested reconsideration. He submitted a November 10, 2007 treatment note of Dr. Wai-Man Ma, a Board-certified family practitioner, which stated that appellant complained of leg and hand cramps.

By decision dated January 28, 2008, the Office denied modification of the August 16, 2007 decision. It found that the medical evidence submitted by appellant was insufficient to establish that he sustained an injury causally related to the March 20, 2006 incident.

On March 16, 2008 he requested reconsideration.

In a March 27, 2008 decision, the Office denied appellant's request for reconsideration on the grounds that it neither raised substantive legal questions nor included new and relevant evidence and, thus, was insufficient to warrant a merit review of its prior decisions.

LEGAL PRECEDENT -- ISSUE 1

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 filed within applicable time limitation; that an injury was sustained while in the performance of

[1] 5 U.S.C. §§ 8101-8193.

duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.[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 or exposure, which is alleged to have occurred.[4] In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.[5]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[6] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[7] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[8]

ANALYSIS -- ISSUE 1

The record supports that on March 20, 2006 appellant was delivering mail on his route. The Board, however, finds that the medical evidence is insufficient to establish that the accepted employment incident caused a right knee injury.

Dr. Tomkiewicz's March 20, 2006 report stated that appellant sustained a right knee strain and that he was disabled for work from March 20 through 23, 2006. This evidence is insufficient to establish appellant's claim as Dr. Tomkiewicz failed to address whether the diagnosed condition and disability were caused by the accepted employment incident. On March 24, 2006 he stated that appellant sustained a right knee strain and "possibly" a meniscal injury that were work related. However, Dr. Tomkiewicz again failed to provide any medical

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

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

[4] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[5] *Linda S. Jackson*, 49 ECAB 486 (1998).

[6] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

[7] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[8] *Charles E. Evans*, 48 ECAB 692 (1997).

rationale explaining how or why the diagnosed conditions were related to the March 20, 2006 employment incident.[9] Further, his opinion that appellant "possibly" sustained a meniscal injury is speculative in nature. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.[10] For these reasons, the Board finds that Dr. Tomkiewicz's March 24, 2006 report is insufficient to establish appellant's claim.

Similarly, Dr. Wang's April 13, 2006 report is insufficient to establish appellant's claim as her opinion that he sustained a "possible" lateral meniscus tear is speculative in nature.[11] Her additional reports stated that appellant sustained a right knee sprain/strain and that he could return to full-duty work without restrictions. Dr. Ma's November 10, 2007 treatment note stated that appellant experienced leg and hand cramps. However, neither Dr. Wang nor Dr. Ma opined that the diagnosed conditions were caused by the March 20, 2006 employment incident. The Board, therefore, finds that their reports are insufficient to establish appellant's claim.

Appellant did not submit sufficient medical evidence to establish a causal relationship between his right knee condition and the accepted March 20, 2006 employment incident. The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained an injury in the performance of duty on March 20, 2006. Therefore, he has failed to meet his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,[12] the Office's regulation provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[13] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[14] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

[9] *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

[10] *L.R. (E.R.)*, 58 ECAB ___ (Docket No. 06-1942, issued February 20, 2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

[11] *Id.*

[12] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

[13] 20 C.F.R. § 10.606(b)(1)-(2).

[14] *Id.* at § 10.607(a).

ANALYSIS -- ISSUE 2

On March 16, 2008 appellant disagreed with the Office's January 28, 2008 decision which denied modification of its finding that he did not sustain an injury due to the accepted March 20, 2006 employment incident. The relevant issue in the case, whether appellant sustained an injury causally related to the March 20, 2006 employment incident, is medical in nature.

Appellant did not submit any relevant or pertinent new evidence not previously considered by the Office in support of his request for reconsideration. Further, he did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Appellant merely requested reconsideration of the Office's January 28, 2008 decision. He did not submit any evidence or argument to the Office to support his request. As appellant did not meet any of the necessary regulatory requirements, the Board finds that he was not entitled to a merit review.[15]

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a right knee injury on March 20, 2006 in the performance of duty. The Board further finds that the Office properly denied appellant's request for a merit review of his claim pursuant to 5 U.S.C. § 8128(a).

[15] *See James E. Norris*, 52 ECAB 93 (2000).

ORDER

IT IS HEREBY ORDERED THAT the March 27 and January 28, 2008 and August 16, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 6, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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