United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 09-1286**
	)	**Issued: December 16, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Fairbanks, AK, Employer	)	

Appearances:
Greg Dixon, 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 April 20, 2009 appellant filed a timely appeal of the June 12, 2008 merit decision of the Office of Workers' Compensation Programs, which denied her traumatic injury claim. She also timely appealed the Office's September 8, 2008 decision denying reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on October 20, 2007.

FACTUAL HISTORY

Appellant, a 59-year-old letter carrier, filed a claim (Form CA-1) for an injury to her right knee that allegedly occurred on October 20, 2007 when she slipped on some snow-covered trash. She continued to work following her alleged injury. Appellant reportedly treated her right knee injury with a heating pad, cold compresses, over-the-counter pain medication and prescription anti-inflammatory medication she received from a prior wrist injury.

Dr. M. Clark Fultz, a family practitioner, examined appellant on October 29, 2007 and diagnosed leg joint pain. Appellant reported having slipped on some snow-covered trash a week earlier. Her right knee slipped and twisted outward. Dr. Fultz also reviewed an October 29, 2007 right knee x-ray, which revealed medial compartment and patellofemoral osteoarthritis with probable intraarticular loose bodies.

A physician's assistant examined appellant on November 8, 2007 and diagnosed degenerative joint disease of the right leg and right knee loose body. Appellant reportedly slipped on a plastic wrap in the snow on October 20, 2007 and twisted her right knee but did not fall. A November 28, 2007 follow-up report included diagnoses of obesity, degenerative joint disease of the right leg and lower leg joint pain. The physician's assistant suspected appellant had either a torn meniscus or a loose body in the knee joint.

A December 3, 2007 magnetic resonance imaging (MRI) scan of the right lower extremity revealed no damage to the menisci or ligamentous structures. However, there was moderate to marked degenerative arthritis of the medial compartment and patellofemoral compartment. There was also evidence of a small joint effusion.

Dr. Cary S. Keller, an orthopedic surgeon, examined appellant on December 8, 2007 and diagnosed osteoarthritis of the right knee. He noted that appellant had injured her right knee at work on October 20, 2007, but he did not otherwise indicate that the diagnosed condition was causally related to the employment injury.

In a decision dated January 29, 2008, the Office denied appellant's claim because the medical evidence did not establish that her right knee condition was causally related to the October 20, 2007 employment incident.

Dr. Ross N. Brudenell, an associate of Dr. Keller, administered corticosteroid injections on January 22 and February 18, 2008. His diagnoses included right knee osteoarthritis and acute pes anserinus tendinitis. In an April 7, 2008 report, Dr. Brudenell indicated that following appellant's October 20, 2007 knee injury she received a series of three corticosteroid shots, most recently on February 18, 2008. He further stated that appellant continued to work full time, but with reduced duty. Dr. Brudenell noted that she had a 25-pound lifting limitation and was advised to avoid climbing altogether. He diagnosed traumatic arthrosis of the right knee, which he indicated was marginally stable with respect to symptoms. Dr. Brudenell also noted that corrective arthroscopy was planned for June 2008.

On April 11, 2008 appellant requested reconsideration. The Office subsequently received a May 28, 2008 duty status report (Form CA-17) from Dr. Brudenell that included a diagnosis of right knee meniscus tear.

By decision dated June 12, 2008, the Office denied modification of the January 29, 2008 decision. It again found that appellant failed to establish a causal relationship between her right knee condition and the October 20, 2007 employment incident.

Appellant filed another request for reconsideration on July 13, 2008. The Office received physical therapy treatment records from May 28, 2008 that included a diagnosis of right knee medial meniscus tear and pes tendinitis. Appellant also submitted a June 24, 2008 report from

Dr. Brudenell who indicated that appellant's occupation as a letter carrier, which involved climbing stairs, climbing in and out of postal vehicles, standing, stooping, bending and squatting, was a significant factor in the development of her continued knee symptoms. Dr. Brudenell further stated that appellant's October 20, 2007 injury, when she slipped on some trash covered by snow, had "at least aggravated the problem, if not ... caused the current diagnosed condition." He added that corrective arthroscopy was still anticipated. The Office also received Dr. Brudenell's July 2, 2008 duty status report (Form CA-17) that noted a diagnosis of right knee meniscus tear with an October 20, 2007 date of injury.

By decision dated September 8, 2008, the Office denied appellant's July 13, 2008 request for reconsideration. Regarding Dr. Brudenell's latest report, it noted that thus far he provided no less than four diagnoses relevant to appellant's right knee condition and identified two different mechanisms of injury. The Office further noted that Dr. Brudenell had not specified what "current diagnosed condition" he was referring to and had not offered a medical explanation to support his opinion. Consequently, it found that Dr. Brudenell's June 24, 2008 opinion on causation was of "diminished probative value." The Office disallowed the request for reconsideration as it was "insufficient to warrant review of the case on the merits."[1]

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[3]

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment

[1] Although the September 8, 2008 decision purports to be a nonmerit denial of reconsideration, the Office's finding that Dr. Brudenell's June 24, 2008 opinion was of "diminished probative value" is an assessment of the relative weight of the evidence. Appellant need only present "relevant and pertinent new evidence" in order to receive merit review and Dr. Brudenell's June 24, 2008 opinion satisfied this standard. 20 C.F.R. § 10.606(b)(2)(iii); *see Billy B. Scoles*, 57 ECAB 258, 259-60 (2005). Because the Office's September 8, 2008 analysis is akin to a review of the merits of the claim, the Board will consider it as such.

[2] 5 U.S.C. §§ 8101-8193 (2006).

[3] 20 C.F.R. § 10.115(e), (f) (2008); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's 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 appellant's specific employment factors. *Id.*

incident that is alleged to have occurred.[4] The second component is whether the employment incident caused a personal injury.[5]

ANALYSIS

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[6] In his latest report dated June 24, 2008, Dr. Brudenell indicated that the October 20, 2007 employment incident "at least aggravated [appellant's] problem, if not ... caused the current diagnosed condition." Dr. Brudenell's diagnoses included right knee osteoarthritis, acute pes anserinus tendinitis, traumatic arthrosis, and most recently, right knee meniscus tear. Although Dr. Brudenell's opinion is insufficient to discharge appellant's burden of proving that the claimed condition is causally related to her federal employment, this evidence is sufficient to require further development of the case record by the Office.[7] On remand, the Office should refer appellant, the case record, and a statement of accepted facts to an appropriate orthopedic specialist for an evaluation and a rationalized medical opinion regarding whether her claimed right knee condition is causally related to the October 20, 2007 employment incident. After it has developed the case record to the extent it deems necessary, a *de novo* decision shall by issued.

CONCLUSION

The Board finds that the case is not in posture for decision.

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

[6] *Horace L. Fuller*, 53 ECAB 775, 777 (2002); *James P. Bailey*, 53 ECAB 484, 496 (2002); *William J. Cantrell*, 34 ECAB 1223 (1983).

[7] *John J. Carlone*, *supra* note 5; *Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the September 8 and June 12, 2008 decisions of the Office of Workers' Compensation Programs are set aside, and the case is remanded for further action consistent with this decision.

Issued: December 16, 2009
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