

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

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L.C., Appellant)	
)	
and)	Docket No. 08-2266
)	Issued: May 12, 2009
U.S. POSTAL SERVICE, PLEASANT HILL BRANCH, Des Moines, IA, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 18, 2008 appellant filed a timely appeal of the July 7, 2008 merit decision of the Office of Workers' Compensation Programs, denying his claim for a recurrence of total disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

ISSUE

The issue is whether appellant has established that he sustained a recurrence of total disability on May 1, 2005 causally related to his accepted employment-related injuries.

FACTUAL HISTORY

On July 10, 2003 appellant, then a 55-year-old mail carrier, filed an occupational disease claim alleging that on May 1, 2003, he became aware of his right knee problems and realized that they were caused by being cramped up in a long-life vehicle for 3½ to 4 hours for 32 miles. The Office accepted his claim for a strain and torn medial meniscus of the right knee. It authorized arthroscopic surgery on the right knee which was performed on October 8, 2003.

By decision dated June 8, 2004, the Office terminated appellant's wage-loss compensation and medical benefits effective that date based on the April 20 and May 3, 2004 medical reports by Dr. Keith W. Riggins, an Office referral physician, which stated that appellant could return to his mail carrier position with no employment-related restrictions. In an October 18, 2004 decision, the Office denied appellant's request for modification.

By decision dated January 4, 2005, the Office granted appellant a schedule award for a 20 percent impairment of the right lower extremity.

On March 26, 2008 appellant filed a claim alleging that he sustained a recurrence of disability on May 1, 2005. He contended that his employment injury had worsened during the last couple of years. Appellant limped and was tired most of the time. He worked eight hours per day and stated that he was not limited in performing his regular work duties.

By letter dated May 6, 2008, the Office requested that appellant submit additional factual and medical evidence including, a rationalized medical report from an attending physician which described his medical history, results of examination and tests, diagnosis, treatment provided and opinion with medical reasons on whether there was a causal relationship between appellant's current condition and his employment-related injuries. Appellant was allowed 30 days to submit such evidence. He did not respond within the allotted time period.

In a decision dated July 7, 2008, the Office denied appellant's recurrence of total disability claim. It found that he failed to submit any medical evidence establishing that he sustained a disability on May 1, 2005 causally related to his accepted employment-related injuries.¹

LEGAL PRECEDENT

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force (RIF)) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.²

When an employee claims a recurrence of or continuing disability causally related to an accepted employment injury he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed period of disability is

¹ Following the issuance of the Office's July 7, 2008 decision, it received additional evidence. The Board may not consider evidence for the first time on appeal which was not before it at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

² 20 C.F.R. § 10.5(x).

causally related to the accepted injury.³ Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.⁴ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.⁵ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁶

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁷ In this regard, medical evidence of bridging knee symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.⁸ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁹

ANALYSIS

The Office accepted that appellant sustained a strain and torn medial meniscus of the right knee. When it issued its May 6, 2008 developmental letter, it specifically requested that appellant submit a rationalized medical opinion from his attending physician as to whether his recurrence of disability was causally related to his accepted employment-related injuries. Appellant did not submit any medical evidence within the allotted time. An award of compensation may not be based on surmise, conjecture, speculation, or upon his own belief that there is causal relationship between his claimed condition and his employment.¹⁰ As appellant has failed to submit any medical evidence containing a rationalized opinion establishing that he sustained a recurrence of disability on May 1, 2005 causally related to his accepted employment injuries, the Board finds that he has not met his burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a recurrence of disability on May 1, 2005 causally related to his accepted employment-related injuries.

³ *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

⁴ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

⁵ *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

⁶ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

⁷ *See Ricky S. Storms*, *supra* note 5; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁸ For the importance of bridging information in establishing a claim for a recurrence of disability, *see Richard McBride*, 37 ECAB 748 at 753 (1986).

⁹ *See Ricky S. Storms*, *supra* note 5; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹⁰ *John D. Jackson*, 55 ECAB 465 (2004); *William Nimitz*, 30 ECAB 57 (1979).

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 12, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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