United States Department of Labor
Employees' Compensation Appeals Board

N.B., Appellant	)	
and	)	**Docket No. 11-630**
	)	**Issued: November 4, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Warrenton, VA, Employer	)	

Appearances:
Appellant, pro se
No appearance, for the Director

Oral Argument October 11, 2011

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 14, 2011 appellant filed a timely appeal from an October 29, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) and a December 3, 2010 OWCP decision finding that his application for reconsideration was untimely and failed to show clear evidence of error. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 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 an injury in the performance of duty on June 3, 2010.

FACTUAL HISTORY

On June 8, 2010 appellant, then a 64-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right knee injury in the performance of duty on

[1] 5 U.S.C. § 8101 *et seq.*

June 3, 2010. He indicated that he stepped off a curb to load trays of flats into his vehicle and felt pressure on his knee. In a June 8, 2010 statement, a supervisor advised that appellant indicated that his knee was hurting on June 4, 2010, but did not report an employment injury until June 7, 2010.

In a letter dated June 21, 2010, OWCP requested that appellant submit medical evidence with respect to his claim for compensation. On July 2, 2010 appellant submitted a duty status report (Form CA-17) from an orthopedic surgeon.[2] The report listed the date of examination as June 7, 2010 and the date of the report was June 18, 2010. The supervisor's portion of the report stated that appellant injured his knee on June 3, 2010 while loading vehicle and stepping off a curb. The clinical findings were reported as "FX [fracture] tibial plateau" and the physician provided work restrictions.

By decision dated July 26, 2010, OWCP denied the claim for compensation. It found the medical evidence was insufficient to establish the claim.

On August 9, 2010 appellant requested reconsideration of his claim. In an August 9, 2010 report, Dr. Sidney Chetta, an orthopedic surgeon, advised that appellant had arthroscopic left knee surgery on April 16, 2010. He stated that appellant's "injury [on June 3, 2010] was separate from his surgery on the same knee where a partial meniscectomy was done." Dr. Chetta indicated that a left knee magnetic resonance imaging scan was obtained on June 7, 2010, showing femur and tibia bone bruise. He further stated, "Misstep [June 3, 2010], while at work as postman, stepped off curb, left knee injury, [p]atient incurred a subclinical FX tibial plateau. This is not due to previous surgery for torn meniscus." Dr. Chetta concluded the fracture had healed and appellant could return to work on August 10, 2010.

Appellant also submitted a Form CA-17 dated August 9, 2010 from an orthopedic surgeon whose signature is illegible. The physician described the clinical findings as knee pain, swelling and tibial plateau fracture. In a brief note dated July 19, 2010, Dr. Francis Gyamfipa, an orthopedic surgeon, stated that appellant had received treatment for a left knee injury he had sustained and should minimize walking or weight bearing.

By decision dated October 29, 2010, OWCP reviewed the merits of the claim. It found the factual aspects of the claim were not sufficient to establish an injury in the performance of duty as appellant did not fully describe how his knees were affected on June 3, 2010 when he stepped off the curb.

On November 24, 2010 appellant submitted a request for reconsideration. In a report dated November 23, 2010, Dr. Chetta, stated that on June 3, 2010 appellant was loading a mail truck parked on a 30 degree incline. Appellant stepped off the curb onto the parking lot. Dr. Chetta stated, "This resulted in an impact force on the medial compartment of the left knee. The force caused a fracture of the medial tibial plateau. This happened to be the same knee and compartment as the previous meniscal surgery." Dr. Chetta found that the surgery and the injury were not related, and the meniscal surgery had been completed and appellant recovered and resumed normal work without problem.

[2] The signature is illegible.

Appellant also submitted a November 23, 2010 factual statement as to the June 3, 2010 incident. He hurt his left knee as the step off the curb was longer than he anticipated. Appellant was carrying a tray of mail and the parking lot had a 30 degree downward slope

By decision dated December 3, 2010, OWCP found that appellant had requested reconsideration by letter dated November 24, 2010 of a decision dated November 24, 2010. It denied reconsideration as the request was not filed within one year and appellant had not shown clear evidence of error.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, 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.[3] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[5] The phrase "sustained while in the performance of duty" in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment."[6] In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP 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.[7]

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

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

[5] 5 U.S.C. § 8102(a).

[6] *Valerie C. Boward*, 50 ECAB 126 (1998).

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

the analysis manifested and the medical rationale expressed in support of the physician's opinion.[8]

ANALYSIS

The first component of fact of injury is whether the incident occurred as alleged. The October 29, 2010 OWCP decision found there was insufficient evidence as to the factual aspect of the claim. There was some confusion as to which knee was injured, since appellant initially referred to the right knee. Subsequent evidence has clarified that appellant claimed a left knee injury. The August 9, 2010 report from Dr. Chetta clearly referred to the left knee. In addition, appellant submitted a November 23, 2010 statement describing the June 3, 2010 incident and the claimed left knee injury. There was no contrary evidence presented. The Board finds that the factual component of fact of injury has been established in this case.

The issue therefore is whether there was sufficient medical evidence to establish a diagnosed condition causally related to the June 3, 2010 employment incident. As to the medical evidence, appellant has submitted reports from Dr. Chetta with a diagnosis of subclinical fracture of the tibial plateau. He noted imaging studies taken June 7, 2010 in support of his diagnosis.

On the issue of causal relationship between the diagnosed condition and the employment incident, OWCP failed to properly review the medical evidence. Its December 3, 2010 decision erroneously concluded that the application for reconsideration was untimely. The application for reconsideration was dated and postmarked November 24, 2010 and therefore was a timely reconsideration request of the October 29, 2010 OWCP decision.[9] OWCP applied an erroneous standard of review ("clear evidence of error") to the November 23, 2010 report submitted on reconsideration. Appellant had submitted new and relevant evidence with a timely reconsideration request and was entitled to a merit review of the case.[10]

The Board will accordingly remand the case for a proper merit review of the evidence of record. After such further development as OWCP deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that appellant has established that an employment incident occurred as alleged on June 3, 2010. The case is remanded to OWCP for proper review of the medical evidence of record.

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

[9] A claimant has one year to timely request reconsideration of an OWCP final decision. 20 C.F.R. § 10.607(a). An untimely application for reconsideration must demonstrate clear evidence of error by OWCP. 20 C.F.R. § 10.607(b).

[10] *See* 20 C.F.R. §§ 10.606(b)(2), 10.608.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 3, October 29 and July 26, 2010 are set aside and the case remanded to OWCP for further action consistent with this decision of the Board.

Issued: November 4, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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