United States Department of Labor
Employees' Compensation Appeals Board

M.G., Appellant	)	
and	)	**Docket No. 11-179**
	)	**Issued: September 7, 2011**
DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, Fresno, CA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 22, 2010 appellant filed a timely appeal from a June 11, 2010 merit decision of an Office Workers' Compensation Programs' hearing representative which denied his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[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 met his burden of proof to establish that his left knee condition was causally related to factors of his employment.

FACTUAL HISTORY

On March 18, 2009 appellant, then a 52-year-old irrigation systems mechanics' (ISM) helper, filed a traumatic injury claim alleging that on March 4, 2009 he sustained a left knee injury as a result of walking up and down stairs and using a weed whacker at work. In a supplemental statement, he reported that on March 4, 2009 his left knee started to hurt after repeatedly walking up and down stairs in the galley. Appellant spent the next two days standing

[1] 5 U.S.C. § 8101 *et seq.*

up using the weed whacker even though he notified another employee that his knees hurt and requested to stay off his knees. He was seen by Dr. Raymond Rowell, a Board-certified family practitioner, who referred him to Dr. Steven Viess, a Board-certified orthopedic surgeon.

The employing establishment controverted appellant's claim alleging that appellant never reported or complained of any injury during his employment until he was informed of his termination effective March 17, 2009.

Appellant submitted medical reports from Dr. Rowell. In a March 16, 2009 medical referral form addressed to Dr. Veiss, Dr. Rowell diagnosed appellant with knee and leg sprains, and requested assessment of left knee instability and a possible anterior cruciate ligament (ACL) tear. In a March 16, 2009 excuse slip, he excused appellant from work for the period March 11 to September 1, 2009.

On July 2, 2009 OWCP advised appellant that the evidence submitted was insufficient to support his claim and requested additional information. It requested that he provide additional statements regarding any medical treatment for his lower extremities or any preexisting knee condition. OWCP also asked for a medical report from appellant's treating physician, which included examination and test results, a diagnosis, treatment provided, effect of the treatment, and a doctor's opinion, with stated medical reasons, regarding the cause of his condition.

In a June 7, 2009 report, Dr. Rowell stated that appellant consulted him on March 16, 2009 for left knee pain from a prior surgery in 2008. Appellant stated that his condition which was exacerbated by his work on a government dam project that required him to repeatedly climb up and down stairs. Dr. Rowell listed appellant's 2008 knee surgery and stated that examination revealed clear instability of his left knee that resulted in a surgical repair performed by Dr. Viess. Appellant also complained of problems with irritability, muscle aches, abdominal symptoms, and headaches, which he alleged resulted from cutting pipes for work with no protective equipment and no monitoring for lead levels. He was threatened with administrative discipline when he tried to report his concern for high levels of lead.[2] Dr. Rowell noted that appellant's blood level according to the March 16, 2009 report indicated abnormal exposure to lead. He opined that there was no question that appellant's knee complaint was exacerbated by his work duties.

In a decision dated January 13, 2010, OWCP denied appellant's claim. It adjudicated his claim as an occupational disease claim because he described work factors that occurred over the course of more than one work shift. OWCP accepted that appellant's work involved walking up and down stairs, but found insufficient medical evidence to establish a causal relation between his left knee condition and factors of his employment.

On January 21, 2010 appellant, through his representative, requested an oral hearing before the Branch of Hearings and Review, which was held on April 7, 2010. Appellant was represented by counsel. He explained that he initially injured his left knee when he was an Army paratrooper serving in Vietnam and underwent a meniscus repair in 2008. Appellant worked as a union ironworker for approximately 20 years before he began working as an ISM helper at the employing establishment on January 5, 2009. His civilian employment activities involved

[2] The record reflects that appellant submitted a separate claim for lead exposure, case xxxxxx544, which is not the issue in this case.

working on a dam and he did not experience any knee problems from his federal employment until March 4, 2009. Appellant was cleaning the walls inside the dam, which was approximately 100 feet down, and the lead mechanic, Richard Miranda, kept calling him, causing appellant to climb up and down the stairs numerous times. He estimated that the staircase had 75 steps.

Appellant did not report his knee problems because the weekend was coming up and he thought his condition would improve with ice and rest. The following two days he used the weed whacker and his knees continued to hurt. By the end of the week, appellant stated that his knee was pretty swollen, and he spent most of the weekend putting ice on it. On Monday morning, he informed a Mr. Shamp, another employee, about his knee pain. Appellant then worked on a crane to remove trashcans, which required him to climb up a ladder, walk onto the crane area with a safety device and push against the crane to line it up. He again experienced pain in his knee. The next day, he told his supervisor about his knee. On Wednesday appellant did not work. When he returned to work the next day, he was told he was fired.

Appellant stated that he was initially examined by Dr. Rowell, who referred him to Dr. Viess, who diagnosed a detached ACL and performed surgery on May 6, 2009.

Appellant refuted the employing establishment's contention that he did not allege an employment-related injury until he found out he was being terminated.

In a December 23, 2008 preappointment examination report, Dr. John Copeland, a family practitioner, stated that appellant was physically qualified for the job. Appellant had full range of motion in all extremities. In a December 23, 2008 treatment record, Dr. Copeland noted that appellant underwent knee surgery for numerous sprains.

In a July 14, 2009 report, Dr. Viess stated that he had treated appellant since March 2009 for his ACL-deficient left knee and long history of knee problems. Appellant underwent an arthroscopic ACL reconstruction on May 6, 2009. He reported that appellant was unable to perform his full work duties until February 2010, because recovery from this type of surgery took six to nine months. Appellant also complained of similar problems with his right knee.

OWCP also received various statements from employees addressing appellant's work activities.

By decision dated June 16, 2010, OWCP's hearing representative affirmed the January 13, 2010 decision. The claim was denied on the grounds that the medical evidence failed to establish a causal relationship between appellant's left knee condition and his work activities.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative, and substantial evidence[3] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

injury.[4] In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[5]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[6] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident.[7] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[8] The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.[9]

Additionally, under FECA, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.[10] When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.[11] If the employment exposure causes a permanent condition, such as a heightened sensitivity to a wider field of allergens, the employee may be entitled to continuing compensation;[12] a medical restriction that is based on a fear of future aggravation due to employment exposure is not an injury under FECA and therefore no compensation can be paid for such a possibility.[13]

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[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

[5] *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000); *D.U.*, Docket No. 10-144, issued July 27, 2010).

[6] *D.I.*, 59 ECAB 158 (2007); *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *W.D.*, Docket No. 09-658 (issued October 22, 2009).

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *B.B.*, 59 ECAB 234 (2007); *D.S.*, Docket No. 09-860 (issued November 2, 2009).

[9] *Patricia J. Bolleter*, 40 ECAB 373 (1988).

[10] *Raymond W. Behrens*, 50 ECAB 221, 222 (1999); *James L. Hearn*, 29 ECAB 278, 287 (1978).

[11] *Id.*

[12] *James C. Ross*, 45 ECAB 424, 429 (1994); *Gerald D. Alpaugh*, 31 ECAB 589, 596 (1980).

[13] *Carlos A. Maurero*, 50 ECAB 117, 119 (1998); *Gaetan F. Valenza*, 39 ECAB 1349, 1356 (1988).

ANALYSIS

The Board notes that OWCP accepted that from March 4 to 6, 2009 appellant's employment duties included climbing up and down stairs, weed whacking and working on a crane. The record reveals that he had preexisting bilateral knee conditions and had undergone a left knee meniscus repair in 2008. The Board finds that appellant failed to submit sufficient medical evidence to establish that his current left knee condition resulted from or was exacerbated by the accepted employment activities.

Appellant submitted medical reports from Dr. Rowell. In a May 16, 2009 referral form, Dr. Rowell diagnosed knee and leg sprains and requested that Dr. Veiss assess appellant's left knee instability and possible ACL tear. He did not provide any medical history pertaining to appellant's preexisting left knee conditions or surgery. Dr. Rowell also did not address appellant's employment history or employment duties accepted in this case. He did not provide any opinion on the cause of appellant's left knee condition or whether appellant's preexisting knee condition was exacerbated by the federal employment activities.

In a June 7, 2009 report, Dr. Rowell noted appellant's history of knee problems, including a 2008 knee surgery. He observed left knee instability. Dr. Rowell stated that there was no question that appellant's knee complaints were exacerbated by his work, which required him to climb up and down stairs. His opinion, however, is not fully rationalized because it is general in nature and did not address the specific facts of the case. Dr. Rowell referred to appellant's left knee condition in general terms as complaints. He did not explain the process by which work activities such as climbing up and down stairs would cause a specific diagnosed condition or aggravate appellant's preexisting knee condition. Dr. Rowell merely stated a conclusion on causal relationship without providing adequate medical reasoning. As his reports do not contain rationale on the issue of causal relationship, they are of diminished probative value and are insufficient to meet appellant's burden of proof.[14] The Board also notes Dr. Rowell's opinion was not based on a complete factual background because he only mentioned one of appellant's work duties, walking up and down the stairs, and did not address appellant's other employment activities or explain how these activities caused or exacerbated appellant's left knee condition.[15]

In a July 14, 2009 report, Dr. Viess stated that he treated appellant for his ACL-deficient left knee and history of knee problems; but did not provide any opinion on the cause of appellant's left knee condition or whether his employment contributed or exacerbated his condition. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[16] Thus, this report is also insufficient to establish appellant's claim.

As noted, the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. The question of

[14] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *R.F.*, Docket No. 10-927 (issued November 24, 2010).

[15] *See A.G.*, Docket No. 10-1240 (issued February 7, 2011).

[16] *R.E.*, Docket No. 10-679 (issued November 16, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

causal relationship is a medical one and must be resolved by probative medical evidence.[17] The medical evidence of record does not contain probative medical opinion evidence discussing how appellant's left knee condition was caused or exacerbated by the work factors of his employment. Thus, appellant has not met his burden of proof to establish that he sustained a left knee condition in the performance of duty.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his left knee condition was causally related to factors of his employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 11, 2010 be affirmed.

Issued: September 7, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[17] *Supra* note 6; *Margaret Carvello*, 54 ECAB 498 (2003).