United States Department of Labor
Employees' Compensation Appeals Board

R.L., Appellant	)	
and	)	**Docket No. 14-279**
	)	**Issued: May 28, 2014**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, San Francisco, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 20, 2013 appellant filed a timely appeal from a November 7, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that he sustained an employment-related injury in the performance of duty on October 26, 2011.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 10, 2011 appellant, then a 46-year-old maintenance worker, filed a traumatic injury claim alleging that on October 26, 2011 he struck his left knee with a five-gallon container of chemicals.

Appellant was admitted to the hospital on October 31, 2011 and discharged on November 7, 2011. In an October 31, 2011 progress note, Dr. David Shearer, an orthopedic surgeon, noted that appellant had a history of chronic osteomyelitis of the left patella after patellar tendon repair 10 years prior. Appellant was admitted after bumping his knee on a bucket at work and he showed signs of chronic infection with draining sinus tracts but no acute infection. Dr. Shearer noted that appellant returned with increasing pain, difficulty bearing weight and additional anterior swelling. He noted that x-rays of appellant's knee showed a fragmented patella with mixed lytic sclerotic changes consistent with chronic osteoarthritis, no change from prior studies. Dr. Shearer found no evidence of a fracture. He concluded that appellant had chronic osteomyelitis of the patella, acute trauma the prior week that appeared to precipitate a new abscess or septic bursitis. Dr. Shearer noted that treatment awards require extensive debridement, including partial or total patellectomy. Given the decompensation of the infection over the last three days, he would admit appellant and perform definitive surgery rather than delay. On November 1, 2011 appellant underwent irrigation and debridement of the left prepatellar region with removal of all suture material from left patella and excision of the sinus tracts with closure over a drain.

In a November 2, 2011 progress note, Dr. Jennifer Babik, a Board-certified internist with a Board-certified subspecialty in infectious disease, noted that appellant was admitted to the emergency department with acute worsening of infection in setting of trauma. He was now postsurgery with removal of all suture material and excision the sinus tracts. In a November 16, 2011 letter, Dr. Shearer advised that appellant underwent surgery on November 1, 2011 with the orthopedic service and would need six to eight weeks to recover. He recommended that appellant remain off work from November 1 through December 19, 2011.

By letter dated December 28, 2011, OWCP asked appellant to submit further information and to answer questions regarding his treatment and how the incident occurred. It asked him to state where he was and what he was doing when the injury occurred, to describe the bucket and state what chemical was in the bucket, how much it weighed and how he struck it against his knee. OWCP also asked appellant if he had any similar knee issues or symptoms prior to the injury.

In response, appellant submitted a January 4, 2012 report by Dr. Tyson E. Turner, a Board-certified internist, and Dr. Deborah Grady, a Board-certified internist, discussing his medications and treatment for chronic osteomyelitis.

By decision dated January 31, 2012, OWCP denied appellant's claim. It found that, as the mechanism for the injury was not clear, he did not establish that the incident occurred as alleged. Furthermore, there was insufficient medical evidence which causally related appellant's claimed knee condition to the work incident. OWCP noted that appellant had an extensive history of knee problems prior to October 6, 2011 and it was unclear how striking his knee on

October 26, 2011 would cause the need for surgery due to a malignant infection, especially considering that appellant had been draining "white pus" out of his knee every two weeks for the last three to four years.

Appellant responded to OWCP's queries. He indicated that on October 26, 2011 he was working on the roof of an infectious exhaust system for the isolation room. Appellant carried a five-gallon chemical drum across the roof when it bumped his knee and twisted. By the time he returned home, his knee was swollen. On November 1, 2011 appellant was admitted to the hospital for emergency room treatment. He noted that he had a preexisting Mercer infection in his kneecap.

On July 27, 2012 appellant requested reconsideration. He submitted results of a blood culture dated October 5, 2012.

By decision dated October 25, 2012, OWCP denied modification of its January 31, 2012 decision.

On March 8, 2013 appellant again requested reconsideration. He did not submit any new evidence or argument in support of his request.

By decision dated March 14, 2013, OWCP denied appellant's request for reconsideration without conducting a merit review.

On August 15, 2013 appellant requested reconsideration. He submitted a letter from his union representative noting MRSA cases in the San Francisco medical center for the employing establishment in 2010 and 2011 and submitted a copy of an e-mail supporting this allegation.

In a decision dated November 7, 2013, OWCP denied modification of its earlier decisions.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[2]

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

[2] *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

actually experienced the employment incident or exposure, which is alleged to have occurred.[3] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[4] The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.[5]

ANALYSIS

The Board finds that appellant established that the employment incident occurred as alleged. Appellant alleged that on October 26, 2011 he struck his left knee with a five-gallon container of chemicals. An employee's statement regarding an employment incident is of great probative value and will stand unless refuted by strong or persuasive evidence.[6] Appellant sought medical treatment on October 31, 2011. There is no evidence that he did not hit his knee on the drum on October 26, 2011. The Board finds that appellant's statement is consistent with his subsequent course of behavior, and accordingly, finds that he established that he experienced the alleged incident as described.

The Board finds, however, that appellant failed to establish that the accepted incident resulted in his medical condition. The issue of causal relationship is a medical one and must be resolved by probative medical opinion from a physician.[7] No physician clearly links appellant's November 1, 2011 surgery or his medical condition to the October 26, 2011 employment incident. Dr. Shearer does discuss the incident and stated in an October 31, 2011 note that appellant had decompensation of the chronic infection over the last three days and concluded that appellant would not delay his surgery. He did not provide a well-rationalized opinion addressing how the October 26, 2011 incident caused or aggravated appellant's left knee condition. Dr. Shearer did not give a detailed explanation as to how the incident occurred or how it resulted in appellant's surgery on November 1, 2011. He did not explain the relationship in light of appellant's history of Mercer infection. None of the other physicians of record provided a probative opinion with regard to causal relationship. Drs. Turner and Grady discussed appellant's medication but did not address the employment incident. Dr. Babik discussed appellant's medical progress but not the issue of causal relationship.

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

[4] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

[5] *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

[6] *Thelma Rogers*, 42 ECAB 866 (1991), *see also S.V.*, Docket No. 08-146 (issued May 12, 2008).

[7] *I.A.*, Docket No. 13-1701 (issued January 17, 2014).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment, nor, his belief that the condition was caused by his employment is sufficient to establish causal relationship.[8] As appellant did not establish that his medical condition was causally related to the accepted factor of his employment, he did not meet his burden of proof.

Appellant may submit evidence or argument with a written request for reconsideration within one year of this merit decision pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that he sustained an employment-related injury in the performance of duty on October 26, 2011. Although appellant did establish that he experienced the employment incident, he did not submit medical evidence sufficient to establish a medical condition causally related to this incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 7, 2013 is affirmed, as modified.

Issued: May 28, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

[8] *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).