U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACK M. VANCE and U.S. POSTAL SERVICE
MAIN POST OFFICE, Baltimore, MD

Docket No. 99-1857; Submitted on the Record;
Issued September 15, 2000

DECISION and ORDER

Before A. PETER KANJORSKI, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has met his burden of proof to establish that he sustained a traumatic injury in the performance of duty.

On May 6, 1998 appellant, then a 31-year-old postal clerk, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that on April 1, 1998 he injured his left knee and aggravated a previous injury. He did not stop work.

The employing establishment controverted appellant's claim in an undated letter received by the Office of Workers' Compensation Programs on June 19, 1998. His supervisor, Barbara Weaver, reported that appellant notified her on April 1, 1998 that he sustained an injury to his left knee which he alleged that he hurt and twisted when he was pulling a tray of mail off an all purpose container. Ms. Weaver noted that appellant was limping when he reported to work and that appellant had an old motor cycle injury. She stated that appellant was filing mail on a ledge which was already filled with mail when the claimed injury occurred. Ms. Weaver noted that appellant worked slowly and the floor was clean where the claimed injury occurred. It was also noted that appellant was angry because he had requested a change of schedule and his request was denied.

In a June 10, 1998 report, Dr. Deneen Pieri, Board-certified in internal medicine, opined that appellant had persistent left knee pain since April 1, 1998 and indicated that he needed surgery.

In an April 20, 1998 report, Dr. Albert Folgueras, a Board-certified orthopaedic surgeon, noted that appellant had a lump on the left knee with aching and soreness in the area. Dr. Folgueras noticed the lump three or four weeks ago and "did not recall any recent trauma." He noted that as a child, appellant had Legg Perthes disease which was treated with a cast and immobilization for almost a year. Dr. Folgueras also noted that a heavy safe fell on appellant in 1988 and crushed his pelvis. Appellant sustained a fracture of the pelvis and was treated at the

shock trauma unit. Additionally, he noted that appellant had swelling in the left knee which had the appearance of a ganglion cyst or synovial cyst. X-rays revealed early degenerative changes but no obvious bone pathology. Dr. Folgueras diagnosed a ganglion cyst of the left knee.

In an April 29, 1998 magnetic resonance imaging (MRI) scan to the left knee, Dr. John Bodine, Board-certified in diagnostic radiology, vascular and interventional radiology, concluded that appellant had an abnormal lateral meniscus, diffuse horizontal cleavage tear, questionably extending to the superior surface of the meniscus and with extension to the meniscular capsular junction region, with associated meniscal cyst fluid collections.

In a June 17, 1998 letter, the employing establishment stated that appellant had hip and knee problems from a previous injury which prohibited him from lifting mail by the tray. The employing establishment contended that he normally loaded his ledge by taking hands full of mail.

In letters dated July 2, 1998, the Office advised appellant of the additional factual and medical evidence needed to establish his claim and requested that he submit such.

Appellant replied to this request and submitted an undated, unsigned letter indicating that he was unsure of the exact date of his injury. He indicated that he was working the Tour II, dayshift at operation 030 under Ms. Weaver. Appellant was pulling a tray with mail out of the all-purpose container when he somehow hurt his knee. He stated that he probably twisted it and fell onto the floor. Appellant indicated a coworker saw him on the floor and notified his supervisor. He then indicated that he was not sure if he hurt himself from his old injury.

In a June 16, 1998 report, Dr. Pieri indicated that appellant had persistent left knee pain since April 1, 1998 and should have a surgery as soon as possible to repair the left knee.

In a June 29, 1998 report, Dr. Shelton C. Simmons, Board-certified in orthopedic surgery, opined that he had reviewed the MRI scan and there appeared to be a tear of the lateral meniscus and a fairly significant sized cyst laterally. Dr. Simmons recommended arthroscopy.

In a July 13, 1998 report, Dr. Pieri indicated that she had seen appellant on March 31, 1998. She indicated that he noted pain and swelling in his left knee for approximately two to three days. However, Dr. Pieri did not indicate to her that he had injured it at work. However, she did state that he did inform the orthopedist that he had injured himself at work by lifting heavy bundles of mail and then turning to place them down. Dr. Pieri also recommended arthroscopic surgery.

In response to a letter from the Office requesting additional factual information, appellant responded by indicated that while working on April 1, 1998, he pulled the tray out of an all purpose container and when he turned with the tray, he twisted his right knee and fell to the floor because the pain was so bad. He indicated that the trays weighed about two to three pounds. Appellant also indicated that he was alone when it happened, but Ms. Weaver, a supervisor, came right away. He also indicated that he had never had any problems with the knee before.

In a decision dated October 14, 1998, the Office denied compensation on the grounds that fact of injury was not established. The Office found that there was insufficient evidence to show that the claimed April 1, 1998 incident occurred as alleged.

On October 27, 1998 appellant, through his attorney, requested a review of the written record.

In a report dated October 22, 1998, Dr. Pieri attempted to clarify her previous reports by stating that when she initially saw appellant on March 31, 1998 it was for increased swelling and pain in his left knee. She also saw him on April 6, 1998 and stated that he did not note any trauma to his left knee at that time. However, Dr. Pieri indicated that she had spoken to appellant's mother and she had indicated that appellant had suffered an injury to his knee at work on April 1, 1998. She explained that communication was difficult because appellant is deaf and was without an interpreter initially. Dr. Pieri noted that appellant was seen at the medical facility at work and stated that it appeared that the work injury of April 1, 1998 caused the meniscal tear.

Appellant's attorney argued that appellant was a deaf mute with a history of a crush injury to his torso and pelvis in 1988. He had a shortened left lower extremity since the 1988 accident and walked with a limp using a cane since his recovery in 1989. Appellant's attorney noted that this was particularly important since it was possible that it could be incorrectly inferred that appellant had a preexisting left knee condition. Additionally, he indicated that because of appellant's speaking and hearing difficulties, his communication was not taken into consideration by the Office claims examiner. Appellant's attorney also argued that the medical reports supplied to the Office offered an explanation of how appellant was uncertain as to the cause of his injury stemming from a cyst or from trauma to his knee.

A February 8, 1999 attending physician's report (Form CA-20) signed by Dr. Simmons indicated that appellant sustained a lateral meniscal tear of the left knee during the performance of work duties. The physician checked a box yes that inquired as to whether or not he believed the condition was caused or aggravated by an employment activity. He also wrote out, "occurred during performance of work duties."

In a decision dated March 11, 1999, the Office hearing representative affirmed the decision of October 14, 1998 finding that there was doubt as to whether the April 1, 1998 incident occurred as alleged.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the

[1] 5 U.S.C. §§ 8101-8193.

applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each and every case regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

In a claim for compensation based upon a traumatic injury, the employee must establish fact of injury by submitting proof that he or she actually experienced the employment accident or event in the performance of duty and that such accident or event caused an injury as defined in the Act and its regulations.[4] The Office's regulations define traumatic injury as a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.[5] The injury must be caused by a specific event or incident or series of events of incidents within a single workday or shift.[6]

In determining whether an employee sustained an injury in the performance of his duty, the Office 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.[7] The first component to be established is that the employee actually experienced the employment incident at the time, place and in the manner alleged.[8] In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.[9] An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.[10] A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.[11]

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[2] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[3] *Daniel J. Overfield*, 42 ECAB 718 (1991).

[4] *Gene A. McCracken*, 46 ECAB 593, 596 (1995).

[5] 20 C.F.R § 10.5(15).

[6] *Richard D. Wray*, 45 ECAB 758, 762 (1994).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995); *see Elaine Pendleton*, 40 ECAB 1143, 1147 (1989).

[8] *Elaine Pendleton*, *supra* note 7.

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

[10] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[11] *Id.* at 255-56.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[12]

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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[13]

Regarding the first component, appellant alleged that on April 1, 1998 he sustained an injury to his left knee while moving trays of mail. He indicated that he was pulling trays with mail out of the all-purpose container and somehow hurt his knee and fell to the floor. Appellant also stated that he twisted his ankle and felt it pop, and that he was not sure if he hurt himself from his old injury. The employing establishment controverted the claim asserting that appellant had come in with a limp from an old motor cycle injury. Appellant's attorney explained that appellant was on permanent light duty and he walked with a cane and had sustained a previous crush injury to his hip which caused one side to be shorter such that the appearance of a limp could be construed as related to his knee. He provided essentially consistent explanations of how the April 1, 1998 incident occurred and his supervisor indicated that she and a coworker saw appellant on the floor immediately after the claimed incident occurred. Although Dr. Pieri indicated that appellant was treated on March 31, 1998 for a left knee pain, this does not preclude the occurrence of the April 1, 1998 incident. Nor does the fact that appellant was not performing strenuous duties preclude possible compensability of an injury arising from such incident.[14]

The Board finds that appellant relayed a consistent history and concludes that the alleged incident did occur at the time, place and in the manner alleged.

The Board finds however, that the medical evidence of is not sufficient to establish that the employment incident caused a compensable injury.

In the instant case, appellant was informed that he needed to submit a comprehensive medical report from his treating physician explaining how work factors or incidents in his

[12] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[13] *James Mack*, 43 ECAB 321 (1991).

[14] *See Geraldine Sutton*, 46 ECAB 1026 (1995) (there is no necessity to show special exposure or unusual conditions of employment in the factors producing disability).

employment caused or contributed to his claimed condition. However, none of the medical reports in the record provided a rationalized medical opinion explaining why particular work factors identified by appellant caused his claimed injury.

Dr. Pieri stated on June 16, 1998 that appellant had persistent left knee pain since April 1, 1998 and required surgery. In a July 13, 1998 report, she noted treating appellant on March 31, 1998 for knee pain of two to three days' duration. In an October 22, 1998 report, Dr. Pieri noted the April 1, 1998 employment incident and opined that it "appears" that the April 1, 1998 employment incident caused a meniscal tear. However, this opinion in a report of causal relationship is unrationalized and speculative in nature.[15] Dr. Pieri also offered no explanation regarding why the left knee condition for which she treated appellant on March 31, 1998 would not have been the only cause of his continuing left knee condition.

Dr. Folgueras stated that appellant had a lump on the left knee and diagnosed a ganglion cyst of the left knee but did not elaborate or attempt to provide a causal relationship between that condition and the factors of appellant's federal employment.

Dr. Simmons, checked a box on a form report indicating appellant's condition was caused by his employment and further opined that appellant's condition occurred during performance of work duties. However, checking the "yes" box that disability was causally related to employment is insufficient without further explanation or rationale to establish causal relationship.[16] Dr. Simmons did not offer a rationalized medical opinion as to how appellant's employment caused or aggravated his condition. He also did not indicate any knowledge that appellant was being treated for a left knee condition on the day before the April 1, 1998 injury occurred.[17]

An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.[18] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of federal employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or

[15] The Board has held that an opinion which is speculative in nature has limited probative value in determining the issue of causal relationship. *Arthur P. Vliet,* 31 ECAB 366 (1979).

[16] *Barbara J. Williams,* 40 ECAB 649 (1989).

[17] 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion. *See James Mack,* 43 ECAB 321 (1991).

[18] *William S. Wright,* 45 ECAB 498 (1993).

aggravated appellant's diagnosed condition.[19] Appellant failed to submit such evidence and therefore failed to discharge his burden of proof.[20]

The decision of the Office of Workers' Compensation Programs March 11, 1999 is affirmed as modified.

Dated, Washington, DC
September 15, 2000

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

[19] *Id.*

[20] The Board notes that following issuance of the March 11, 1999 decision, the Office issued a June 10, 1999 merit decision appellant's reconsideration request. However, as appellant filed his appeal with the Board on May 19, 1999, the Office's June 10, 1999 decision is null and void as it pertains to the same issue over which the Board has jurisdiction; *see Russell E. Lerman,* 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).