U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WIJAHAT RIYAZ and U.S. POSTAL SERVICE,
POST OFFICE, Springfield, MO

Docket No. 03-589; Submitted on the Record;
Issued July 25, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury to his right knee in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On June 23, 2002 appellant, then a 39-year-old mail processor, filed a notice of traumatic injury and claim for continuation of pay/compensation, Form CA-1, alleging that on June 20, 2002 he injured his right knee due to the "repetition motion with twisting and turning" to sweep the mail machines. On the reverse of the form, his supervisor indicated that appellant stopped work on June 21, 2001 and returned to work on June 23, 2002.

Evidence accompanying the claim included a personal statement from appellant, dated June 21, 2002, and a return to work form, signed by a Dr. Newport,[1] from the Saint John's Hospital emergency room, dated June 22, 2002. Dr. Newport noted a diagnosis of acute right knee pain, probably an overuse injury. Dr. Newport also noted that appellant was to follow up with a workers' compensation doctor on June 24, 2002. Dr. Newport also restricted appellant's use of his right knee.

In a July 1, 2002 letter, the Office advised appellant that the information submitted in his claim was not sufficient to determine whether appellant was eligible for benefits under the Federal Employees' Compensation Act.[2] In particular, appellant was directed to provide a comprehensive medical report and a physician's opinion, with medical reasons for such opinion, as to how appellant's work history caused or aggravated the claimed injury.

[1] The physician's full name is not discernable from the record.

[2] 5 U.S.C. §§ 8101-8193.

In response to the Office's letter, appellant submitted answers to the questions posed in the July 1, 2002 letter. Additionally, Dr. Richard Rethorst, a Board-certified family practitioner, submitted an initial visit report, dated June 24, 2002. Dr. Rethorst noted a diagnosis of right knee pain and swelling. He allowed appellant to return to work with modified duty and restricted appellant's activities.

Further, Dr. Rethorst submitted a narrative report, also dated June 24, 2002. He noted that appellant was seen for right knee pain, but he was not sure that appellant's condition was occupationally related, especially since there was no history of trauma to the knee. Dr. Rethorst opined that a better diagnosis could be ascertained once all medical tests were completed and reviewed.

In a June 25, 2002 status report, Dr. Rethorst noted that appellant was feeling better; the knee swelling was decreasing and appellant's motion was returning. He also noted that the laboratory reports did not reveal any diagnostic findings. Additionally, Dr. Rethorst noted that he reviewed emergency room records from St. John's Hospital. He noted that the x-ray reports from St. John's Hospital were negative and the hospital's diagnosis of overuse syndrome seemed to be logical.

By decision dated August 13, 2002, the Office denied appellant's claim. The Office found that the medical evidence did not establish a relationship between the June 20, 2002 work incident and appellant's medical condition.

On September 9, 2002 appellant requested reconsideration of the Office's August 13, 2002 denial of claim. He enclosed a copy of the previously filed emergency room report, signed by Dr. Newport on June 22, 2002.

By decision dated October 25, 2002, the Office denied appellant's request for reconsideration. The Office found that the evidence submitted was of a cumulative and repetitious nature and was not sufficient to warrant a merit review of the August 13, 2002 decision.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

An employee seeking benefits under the Act[3] has the burden of establishing that 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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.[4] These are essential elements of each and

[3] 5 U.S.C. §§ 8101-8193.

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

every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

In order to determine whether an employee actually sustained an injury in the performance of 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. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[6]

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.[7]

In the instant case, it is not disputed that the claimed incident occurred as alleged. Appellant, as a part of his job, engages in repetitive knee motion. However, appellant has not established the second component of fact of injury as there is insufficient medical evidence to establish that he sustained an injury to his knee on June 20, 2002 due to the employment incident. The medical reports appellant submitted establish that appellant sustained an injury to his knee, but they contain insufficient medical rationale explaining how his work duties caused his diagnosed condition.

As noted above, part of the burden of proof includes the submission of rationalized medical evidence establishing that the claimed condition is causally related to employment factors. As appellant has not submitted such evidence, he has not met his burden of proof in establishing his claim.

In the instant case, Dr. Newport made a diagnosis of right knee pain and swelling, noting that it was probably an overuse injury. Dr. Newport did not specifically address whether appellant's employment caused or aggravated the diagnosed condition. Additionally, Dr. Rethorst noted that appellant was seen for right knee pain and swelling, but he questioned whether appellant's condition was occupationally related, since there was no history of trauma to the knee. He provided no support for causal relation between the diagnosed condition and employment factors.

As appellant has not submitted medical evidence explaining why his knee condition is causally related to his federal employment, the Office properly denied his claim.

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[5] *Daniel J. Overfield,* 42 ECAB 718, 721 (1991); *Victor J. Woodhams,* 41 ECAB 345 (1989).

[6] *Elaine Pendleton, supra* note 4.

[7] *See* 20 C.F.R. § 10.115(e); *Gary Fowler,* 45 ECAB 365 (1994).

The Board further finds that the Office properly denied appellant's request for reconsideration without conducting a merit review of the claim.

Section 10.606(b)(2) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by submitting a request which present arguments and contains evidence that: (1) shows that the Office erroneously applied or interpreted a specific point of law; or (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[8] Section 10.608(b) provides that when an application for review of the merits of a claim which does not meet at least one of these three requirements the Office will deny the application for review without review of the merits of the claim.[9]

In his request for reconsideration, appellant did not submit any new evidence nor did appellant specify any erroneous application of law or advance a point of law or fact not previously considered by the Office. As the issue in this case is medical in nature, the submission of new medical evidence addressing whether employment factors caused or aggravated the claimed condition was necessary to require the Office to reopen the claim for a merit review. However, the only medical report submitted was Dr. Newport's June 22, 2002 emergency room report. This report was previously of record and considered by the Office in its August 13, 2002 decision. The Board has held that material which is repetitious or duplicative of that already in the case record is of no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.[10] For these reasons, the Board finds that the Office properly denied appellant's request for reconsideration without conducting a merit review of the claim.

[8] 20 C.F.R. § 10.606(b)(2) (2002).

[9] 20 C.F.R. § 10.608(b) (2002).

[10] *See Eugene F. Butler*, 36 ECAB 393, 398 (1984).

The decisions of the Office of Workers' Compensation Programs dated October 25 and August 13, 2002 are hereby affirmed.

Dated, Washington, DC
July 25, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member