United States Department of Labor
Employees' Compensation Appeals Board

GERSON CARRATALA, Appellant	)	
	)	
and	)	
	)	**Docket No. 05-1075**
U.S. POSTAL SERVICE, MORGAN POSTAL DELIVERY CENTER, New York, NY, Employer	)	**Issued: January 9, 2006**
	)	

Appearances:
Edward Malinowski, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 13, 2005 appellant filed a timely appeal of a March 14, 2005 decision of the Office of Workers' Compensation Programs which denied modification of its December 6, 2002 decision that found that he did not sustain an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty on January 9, 2002.

FACTUAL HISTORY

The case has been on appeal previously.[1] In a January 6, 2005 decision, the Board found that appellant's October 23, 2003 correspondence was a timely request for reconsideration and remanded the case for the Office to conduct a review of the reconsideration request under the appropriate standard. The history of the case is contained in the prior decision and is incorporated by reference. The Board notes that the Office's previous merit decision denied the claim on the basis that the incident claimed to have caused the injury did not occur as alleged.

[1] Docket No. 04-1739 (issued January 6, 2005).

Germane to the present appeal, the Board also notes that the record contains a January 11, 2002 report in which Dr. Jeffrey Rosen, a Board-certified orthopedic surgeon, diagnosed a torn cartilage in the left knee and scheduled surgery for appellant.

Subsequent to the Board's January 6, 2005 decision, the Office reviewed the evidence submitted with appellant's October 23, 2003 request, which included an October 23, 2003 statement in which he described the circumstances surrounding his injury. He explained that his injury occurred approximately 7:30 p.m. on January 9, 2002. Appellant alleged that he was working on the run off line and that the motion that he was using was a sort of "twisting motion." He explained that his task involved removing the mail from the line and placing it on a skid. Appellant noted that most of the trays of mail weighed between 5 and 10 pounds and, due to the motion and the weight of the trays, he felt a snap in his left knee. He did not realize the severity of his injury and continued to work, despite the pain. Appellant took a break around 8:45 p.m. and the pain worsened such that he could not walk without help. He informed his supervisor; however, she was not willing to write an accident report at that time, as she would have to stay until 2:00 a.m. and suggested that he go home. Appellant alleged that he could not move his left leg the next morning; however, the earliest appointment he could get was January 11, 2002.

In a September 8, 2003 report, Dr. Rosen explained that on July 16, 2002 he performed a left knee arthroscopy and open removal of hardware on appellant. He attributed appellant's injuries to the incident on January 9, 2002. Dr. Rosen noted that appellant was carrying heavy trays at work when he twisted his knee and began having sharp pain in the knee associated with swelling and loss of motion. Prior to the injury, he did not have any symptoms. Dr. Rosen added that, although appellant had a prior knee injury which was a result of having a metal staple placed in the medial femoral condyle, it was not problematic. He stated that the "injury resulted in displacement of this metal staple and meniscal pathology." Dr. Rosen noted that, the "twisting injury caused breakage and loosening of the previously placed hardware in the distal femur." He indicated that, "the staple would have otherwise remained in the knee permanently and did not need to be removed."

By decision dated March 14, 2005, the Office denied modification of the December 6, 2002 decision. The Office found that the statement was unsigned and insufficient to be accepted as factual and declined to address the medical evidence. The Office determined that the evidence was insufficient to warrant modification.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act[3] and that an injury was sustained in the performance of duty.[4] These are the essential elements of each compensation

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *James E. Chadden Sr.*, 40 ECAB 312 (1988).

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. An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged by a preponderance of the reliable, probative and substantial evidence.[6] An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his or her subsequent course of action. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she has established a *prima facie* case.[7] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[8]

The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[9] The employee must also submit sufficient evidence, generally, only in the form of medical evidence, to establish that the employment incident caused a personal injury.[10] 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.[11]

[5] *Delores C. Ellyet*, 41 ECAB 992 (1990).

[6] *Charles B. Ward*, 38 ECAB 667 (1987).

[7] *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[8] *Thelma S. Buffington*, 34 ECAB 104 (1982).

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

[10] *Id*. For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee).

[11] *Id.*

ANALYSIS

Appellant alleged that he felt a pop and sharp pain in his left knee while working in the tray line on January 9, 2002. The record reflects that two days later, on January 11, 2002, he received treatment from Dr. Rosen for a torn cartilage in the left knee and was being prepared for surgery. Appellant also promptly notified the employing establishment and filed his claim for a traumatic injury on January 15, 2002. He also submitted a statement describing what happened on January 9, 2002, including that he was working on the run off line and explained that the motion that he was using was a sort of "twisting motion." Appellant described how he removed the mail from the line and placed it on a skid and he described the snap in his left knee. He also alleged that initially he did not realize the severity of his injury and continued to work. Appellant further explained that, when he informed his supervisor; she was not willing to write an accident report due to the lateness of the hour and suggested that he go home. The Board finds that there is no evidence refuting that the incident occurred, as alleged, by appellant. Therefore, the Board finds that the first component of fact of injury is established; the claimed incident of January 9, 2002.

The Board also notes that the medical evidence submitted generally supports that the incident caused an injury to appellant's left knee on January 9, 2002. He saw Dr. Rosen on January 11, 2002 and he diagnosed a torn cartilage in the left knee and determined that surgery was required. In his September 8, 2003 report, Dr. Rosen described the incident which included that, appellant was carrying heavy trays at work when he twisted his knee and began having sharp pain in the knee associated with swelling and loss of motion. His report was supportive of causal relationship in that Dr. Rosen explained that prior to the incident on January 9, 2002 appellant did not have any symptoms despite his previous injury 18 years earlier. Dr. Rosen noted that the previous injury required having a metal staple placed in the medial femoral condyle and advised that it was not problematic prior to the work incident. He explained that the metal staple was subsequently displaced as a result of the twisting incident, which also caused breakage and loosening of the previously placed hardware. Dr. Rosen further noted that, but for the January 9, 2002 employment incident, the hardware would have remained in the knee permanently. Although his reports are not sufficiently rationalized to meet appellant's burden of proof in establishing his claim, they stand uncontroverted in the record and are sufficient to require further development of the case.[12]

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[13]

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

[13] *John W. Butler*, 39 ECAB 852 (1988).

The Board will remand the case to the Office for referral to an appropriate medical specialist to determine the extent of any injury or aggravation of any preexisting conditions as a result of appellant's employment incident on January 9, 2002. Following this and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's claim.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2005 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development in accordance with this decision of the Board.

Issued: January 9, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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