

**United States Department of Labor
Employees' Compensation Appeals Board**

DON G. MEEK, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Independence, MO, Employer**

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**Docket No. 05-1370
Issued: January 3, 2006**

Appearances:
Don G. Meek, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 24, 2005 appellant filed a timely appeal of the March 16, 2005 merit decision of the Office of Workers' Compensation Programs, which denied his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.¹

ISSUE

The issue is whether appellant established that his right knee condition was causally related to his federal employment.

¹ The record on appeal contains evidence submitted after the Office issued the March 16, 2005 decision. The Board may not consider evidence that was not before the Office at the time it rendered its final decision. 20 C.F.R. § 501.2.

FACTUAL HISTORY

On October 25, 2004 appellant, a 48-year-old letter carrier, filed an occupational disease claim for a stiff right knee. He attributed his condition to having to walk 90 percent of his mail route. Appellant identified October 7, 2004 as the date he first became aware of his employment-related condition. The only medical evidence submitted with the claim was a December 1, 2004 work release from Dr. Thomas J. McCormack, a Board-certified orthopedic surgeon, who indicated that appellant could return to part-time, light duty beginning December 13, 2004.

On January 31, 2005 the Office requested that appellant submit additional evidence, including a detailed description of the employment-related activities he believed contributed to his condition. The Office also requested information concerning appellant's past medical history and a comprehensive medical report from his treating physician describing his current medical condition and its cause. The Office afforded appellant 30 days to submit the requested factual and medical information.

Appellant submitted treatment records from Dr. McCormack and a February 21, 2004 personal statement. He explained that he injured himself on October 7, 2004 when he slipped while walking his mail route. Appellant recalled that it was a rainy day and there were fallen leaves on the roads and driveways. He claimed that he slipped twice while walking up sealed asphalt driveways, but he did not completely fall down. Appellant returned home on the evening of October 7, 2004 and felt stiffness in his right leg. He reportedly notified his supervisor the following day, October 8, 2004.² The pain persisted over the next few weeks and appellant sought medical treatment on November 2, 2004. Dr. McCormack first saw appellant on November 10, 2004 and he performed surgery on November 23, 2004. Appellant returned to part-time, limited-duty work on December 13, 2004 and he resumed full-time work on December 27, 2004.

The treatment records, which cover the period November 10 to December 20, 2004, note complaints of right knee pain dating back approximately one month. In his initial November 10, 2004 meeting with Dr. McCormack, appellant related his injury to a workers' compensation event, noting that he had been carrying mail on slippery surfaces and experienced increased swelling and soreness in the knee. Dr. McCormack diagnosed right medial meniscus tear with Baker's cyst and recommended arthroscopic debridement. A subsequent magnetic resonance imaging scan confirmed the right medial meniscus tear and the presence of a ganglion cyst on the posterior cruciate ligament. On November 23, 2004 Dr. McCormack performed a right knee partial medial meniscectomy and chondroplasty. He released appellant to part-time duties on December 13, 2004 and increased appellant's workday to six hours on December 20, 2004.

In a decision dated March 16, 2005, the Office denied appellant's claim, finding that he failed to establish that his right knee condition was related to his employment. The Office explained that Dr. McCormack did not express his own opinion on causal relationship, but merely reported what appellant told him about the injury being employment related.

² Gerald Groves, appellant's supervisor, indicated on the claim form that appellant first reported his condition on October 25, 2004, the date he filed his claim.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁴

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.⁵ The second component is whether the employment incident caused a personal injury.⁶ An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.⁷

ANALYSIS

Although appellant filed an occupational disease claim (Form CA-2), his February 21, 2004 description of his injury indicates that the claim is more appropriately classified as a traumatic injury because the alleged injury was confined to a single workday, October 7, 2004.⁸ Appellant claimed that he slipped twice on wet asphalt that day, but did not fall to the ground. Later that evening, he experienced stiffness in his right knee and approximately a month later Dr. McCormack diagnosed right medial meniscus tear with Baker's cyst. Dr. McCormack performed arthroscopic surgery to repair the torn meniscus. However, Dr. McCormack's treatment notes do not include a narrative addressing the cause of appellant's right medial meniscus tear.

³ 5 U.S.C. § 8101 *et seq.*

⁴ 20 C.F.R. § 10.115(e), (f) (1999); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁸ The regulations define an occupational disease or illness as "a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q) (1999). A "traumatic injury" is defined as "a condition of the body caused by a specific event or incident, or a series of events or incidents, within a single workday or shift." 20 C.F.R. § 10.5(ee) (1999).

The only reference to an employment incident appears in Dr. McCormack's November 10, 2004 treatment notes. At that time, he reported that appellant related his right knee pain to a "Workman's [sic] comp [sic] event." According to Dr. McCormack, appellant stated that "he was carrying mail on slippery surfaces" and "had increased swelling and soreness in the posteromedial knee." Dr. McCormack did not attribute appellant's right knee condition to the alleged slipping incidents of October 7, 2004. He only recorded a general history of injury, as appellant provided on November 10, 2004. This general reference does not constitute a rationalized medical opinion on causal relationship. The fact that appellant believes his injury is employment related is not enough to discharge his burden of proof.⁹

CONCLUSION

The Board finds that appellant failed to establish that his right knee condition was causally related to his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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

⁹ *Patricia J. Glenn*, 53 ECAB 159, 160 (2001).