

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

KEVIN T. O'CONNELL, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sierra Gardens, CA, Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 06-895
Issued: June 26, 2006**

Appearances:
Thomas Flack, 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 March 8, 2006 appellant filed a timely appeal of a June 8, 2005 decision of the Office of Workers' Compensation Programs, denying his claim for compensation. The record also contains a December 9, 2005 Office decision finding that appellant's request for reconsideration was insufficient to warrant merit review of the claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established a left knee condition causally related to his federal employment; and (2) whether the Office properly refused to reopen the claim for merit review pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On January 6, 2005 appellant, then a 65-year-old letter carrier, filed an occupational claim (Form CA-2) alleging that he sustained a left knee condition as a result of his federal

employment.¹ The reverse of the claim form indicated that he had been off work from February 7 to December 1, 2004 and had returned to a light-duty position at four hours per day.

In narrative statements, appellant indicated that he originally hurt his left knee in 1960 while in the military, with left knee surgery on 1984. He stated that his federal duties, including standing, casing mail, carrying mail and dismounting from a delivery vehicle, had aggravated his left knee condition. Appellant reported that on February 6, 2004 he experienced left knee pain and underwent arthroscopic surgery on July 8, 2004.

In a brief report dated January 4, 2005, Dr. Ron James, an orthopedic surgeon, stated that appellant had been treated for knee arthritis and received a total joint replacement. He stated, "I do not know the root cause of his knee problems since I did not care for him at the onset of his problems. I do, however, believe that prolonged walking would likely aggravate his arthritis." Appellant also submitted reports regarding treatment for his back and left knee conditions from 2004. Dr. James diagnosed degenerative joint disease of the left knee.

By decision dated April 4, 2005, the Office denied the claim for compensation. The Office found that the medical evidence was insufficient to establish the claim.

Appellant requested reconsideration of his claim and submitted additional evidence. In a report dated May 9, 2005, Dr. Donald Matthews, an orthopedic surgeon, provided a history and reviewed medical evidence regarding both a back and left knee condition. Dr. Matthews stated, "In my medical opinion, I feel that the patient's occupation as a mail carrier contributed to his condition. The increased weight bearing, mail handling profession may have aggravated a preexisting condition and caused the spondylolisthesis to progress. This aggravation is permanent and will only be resolved by surgical treatment with laminectomy and fusion."

In a decision dated June 8, 2005, the Office reviewed the case on its merits and denied modification of the prior decision. The Office found that the medical evidence was insufficient to establish the claim regarding the left knee.

By letter dated October 17, 2005, appellant again requested reconsideration. He indicated that he was including a copy of a Veterans Administration (VA) decision regarding his left knee. The evidence of record included an application to the VA for vocational rehabilitation; no other VA evidence is found in the record. The medical evidence submitted included a form report from Dr. James dated January 4, 2005, stating that appellant had disabling arthritis that likely resulted from injury and years of overuse.

In a decision dated December 9, 2005, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim. The Office identified the requirements for a merit review with a timely reconsideration request and stated that appellant had submitted a VA benefits statement indicating that he was entitled to 10 percent for his left knee. The Office then stated that the next issue was to determine whether appellant had presented clear evidence of error. After discussing the clear evidence of error standard, the

¹ The record indicates that appellant also filed a separate claim for a back injury causally related to his federal employment.

Office stated that none of the medical reports provided clear evidence of error. The Office then found that appellant had submitted a VA decision dated April 2, 1985 which was also in the case file for the back claim and there was no additional medical evidence on causal relationship.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act² 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.³

To establish that an injury was sustained in the performance of duty, a claimant must submit a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition, as well as medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed and establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴ Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁵ 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.⁶ 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.⁷

ANALYSIS -- ISSUE 1

Although appellant argues that the medical evidence is sufficient to establish an employment-related aggravation of a left knee condition, the Board finds that the medical evidence of record is of limited probative value. The brief narrative report from Dr. James dated January 4, 2005 does not provide a complete history, or demonstrate an understanding of appellant's job duties. Moreover, it does not provide a reasoned medical opinion on causal relationship between a diagnosed condition and the identified work factors. Dr. James stated that prolonged walking would likely aggravate arthritis, without providing a sufficient background or medical reasoning.

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁴ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁵ See *Robert G. Morris*, 48 ECAB 238 (1996).

⁶ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *Id.*

The May 9, 2005 report from Dr. Matthews is of limited probative value to the left knee condition as it appears he was referring to appellant's back condition in his opinion on causal relationship. He discussed spondylolisthesis and fusion surgery without identifying the left knee and providing a reasoned medical opinion on causal relationship with the employment factors identified by appellant. For the above reasons, the Board finds that the medical evidence is not of sufficient probative value to meet appellant's burden of proof in this case.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁸ the Office's regulations provides that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that [Office] erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by [the Office]; or (iii) constitutes relevant and pertinent evidence not previously considered by [the Office]."⁹ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.¹⁰

ANALYSIS -- ISSUE 2

The Office's December 9, 2005 decision has several deficiencies and the case must be remanded for a proper decision. The Office indicated that appellant submitted a VA decision, and yet the record transmitted to the Board does not contain a copy of the evidence. Appellant did submit additional medical evidence, including a form report from Dr. James dated January 4, 2005 that was not previously considered, but the Office did not address the report. In addition, it is not clear what standard the Office used in considering whether the request for reconsideration was sufficient to warrant merit review. The "clear evidence of error" standard is appropriate only for untimely reconsideration requests and is not the applicable standard in this case.¹¹

The case will be remanded to the Office for a proper assemblage of the case record and an appropriate decision that considers the evidence of record under the standard set forth at 20 C.F.R. § 10.606(b)(2).

CONCLUSION

Appellant did not establish an employment-related aggravation of a left knee condition. The case will be remanded to the Office for a proper decision on his request for reconsideration.

⁸ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

⁹ 20 C.F.R. § 10.606(b)(2).

¹⁰ 20 C.F.R. § 10.608(b); *see also* *Norman W. Hanson*, 45 ECAB 430 (1994).

¹¹ *See Donna M. Campbell*, 55 ECAB _____ (Docket No. 03-2223, issued January 9, 2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 8, 2005 is affirmed; the December 9, 2005 decision is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: June 26, 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