

explained that he had been kneeling to remove protective wrapping from the bottom of 40 chairs. As he got up, he felt a sharp pain in his right knee which became swollen.

By letter dated September 29, 2004, the Office notified appellant that the evidence submitted was insufficient to establish his claim. The Office advised him of the factual and medical evidence needed to support his claim. The Office requested that the employing establishment submit any records regarding treatment appellant received at its medical facility.

Appellant submitted an injury report which described the September 15, 2004 incident and indicated that appellant had been performing light-duty work. In a September 17, 2004 medical note, Dr. Michael S. Torres, an employing establishment physician, indicated that appellant hurt his right knee on September 15, 2004 and was restricted to limited-duty work until September 23, 2004. He indicated that there was a history of right knee degenerative disease. On September 23, 2004 Dr. Torres listed the date of injury and recommended that appellant be evaluated by an orthopedic specialist. He indicated that appellant could continue with sedentary duty.

The record reflects that appellant filed a claim for a right knee injury on May 22, 1998, after he knocked it against the cab of a truck. On December 14, 2000 the Office accepted that appellant sustained right knee effusion which resolved by June 22, 1998. Appellant submitted treatment notes dated from June 1, 1998 through July 31, 2001. In a March 20, 2001 report, Dr. Edward R. Sweetser, a Board-certified orthopedic surgeon, noted treatment of appellant for persistent pain in the right knee. He stated that "work activities appear to be aggravating the pain in his knee" and that appellant reported intermittent swelling. Dr. Sweetser noted that appellant had similar problems with the left knee which responded well to arthroscopy and recommended arthroscopic examination of the right knee. In an undated memorandum, the employing establishment provided appellant with limited-duty work to accommodate his physical limitations.

In an October 5, 2004 letter, appellant addressed the history of work-related injuries to his left ankle and left and right knees. He underwent arthroscopic surgery of the left knee on November 3, 1999 and responded well to treatment. Appellant stated that he had been diagnosed as having degenerative joint disease and arthritis of both knees, bilaterally, which was a chronic and progressive condition, aggravated by kneeling. He also had two prior surgeries on his left ankle and put a third surgery on hold pending treatment of his right knee.

In an October 5, 2004 note, Frank Reyes, appellant's supervisor, indicated that on September 15, 2004 appellant was instructed to assist James Archey, a coworker, with the removal of plastic leg wrapping from 40 or more chairs that had been received for a conference room. After completing the work, appellant indicated that he experienced pain in his right knee.

By decision dated November 9, 2004, the Office found that appellant did not sustain an injury while in the performance of duty. The Office found that the claimed incident occurred at the time, place and in the manner alleged but there was insufficient medical evidence addressing how appellant's work activities on September 15, 2004 caused or affected his right knee condition.

On November 17, 2004 appellant requested an oral hearing before an Office hearing representative. He submitted a March 4, 2005 note from Dr. Daniel A. Romanelli, a Board-certified orthopedic surgeon, who stated that appellant had preexisting patellofemoral arthritis in September 2004 and had aggravated his knee at work after getting up from a squatted position. Dr. Romanelli stated that appellant recently underwent right knee arthroscopy, partial lateral meniscectomy and chondroplasty of the patella laterally for failed conservative measures. Surgery also revealed chondrocalcinosis deposition disease. He opined that, without a reasonable doubt, greater than 51 percent, appellant's knee was aggravated at work from kneeling and rising up from a squatted position.

The Office also received unsigned treatment notes dated June 24 and July 2, 2004 regarding appellant's left ankle. An unsigned treatment note dated October 1, 2004 revealed that appellant sustained a new right knee injury on September 15, 2004. The note reported findings on physical examination and found no fracture or dislocation based on x-rays of the right knee.

In an undated response to an inquiry from appellant's attorney, Dr. Allen C. Davis, an orthopedic surgeon, stated that appellant's prior right knee injury was diagnosed and treated by Dr. Sweetser. Dr. Davis noted that appellant's September 15, 2004 right knee diagnosis was a medial contusion *versus* tear, secondary to a twisting injury on the job. He noted that appellant did not follow up with him to complete treatment.

In a May 4, 2005 report, Dr. Romanelli noted that appellant had a preexisting history of patellofemoral osteoarthritis and, in September 2004, had aggravated his knee while working in a kneeling posture and arising from squatting. He indicated that appellant had a chronic condition with his right knee that was first diagnosed in 1998 and had experienced effusion which resolved. Dr. Romanelli stated that he initially treated appellant conservatively. Appellant's complaints were primarily centered over the patellofemoral joint and he underwent a right knee arthroscopy, partial lateral meniscectomy, chondroplasty of the patella and a lateral release. Dr. Romanelli stated: "His diagnosis on his presentation of the initial knee injury on September 15, 2004 was that of reaggravation of a preexisting osteoarthritis." He characterized appellant's present condition as stable and stationary and provided an impairment rating and provided work restrictions. He also submitted treatment notes related to appellant's right knee.

In a September 17, 2004 report, Dr. Torres provided a history that on September 15, 2004 appellant hurt his right knee and that he was restricted to sedentary duty only. A September 23, 2004 note diagnosed appellant's condition as a right knee strain. In a March 15, 2005 report, Dr. Torres recommended that appellant perform restricted work duties until April 6, 2005.

By decision dated July 5, 2005, an Office hearing representative affirmed the November 9, 2004 decision. The hearing representative found that appellant failed to submit rationalized medical evidence establishing that he sustained a right knee injury while in the performance of duty.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 filed within the applicable time limitation; that an injury was sustained while 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.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.³

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 or exposure, which is alleged to have occurred.⁴ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁵ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁶ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.⁷

ANALYSIS

Appellant alleged that he sustained injury to his right knee on September 15, 2004 when he arose from a squatting position after removing protective wrapping from the legs of approximately 40 chairs. The Board finds that appellant has established that he experienced this incident at the time, place and in the manner alleged. With respect to whether appellant

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *See Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

⁴ *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁵ *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) ("traumatic injury" and "occupational disease" defined).

⁶ *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

⁷ *Charles E. Evans*, 48 ECAB 692 (1997).

sustained injury on September 15, 2004, the Board finds that the medical evidence is sufficient to require further development of the claim.

The record reflects that appellant was diagnosed prior to the September 15, 2004 employment incident with preexisting degenerative osteoarthritis. In treatment notes submitted contemporaneous to September 15, 2004, Dr. Torres diagnosed a right knee strain based on appellant's history of arising from a squatting position. Appellant subsequently came under the treatment of Dr. Romanelli, a Board-certified orthopedic surgeon, who provided an accurate history of the September 15, 2004 incident at work. On May 4, 2005 he reviewed appellant's prior medical history and treatment for right knee effusion in 1998 which had resolved. He noted that appellant had a chronic condition affecting his right knee and that the activity of arising from a squatting position on September 15, 2004 caused twisting of the knee joint which aggravated appellant's preexisting degenerative disease and necessitated surgery. The Board finds that the reports of appellant's physicians are sufficient to require further development of the claim. The medical reports reflect an accurate history of the accepted employment incident and noted, with explanation, how appellant's right knee degenerative arthritis was aggravated by his work of September 15, 2004. While the reports of Dr. Romanelli lack a full review of appellant's preexisting right knee condition and are not fully rationalized to discharge appellant's burden of proof, they raise an uncontroverted inference between his right knee condition and the accepted employment incident.⁸

On remand, the Office should further develop the medical evidence, as appropriate, to obtain a physician's opinion regarding whether the September 15, 2004 incident at work aggravated appellant's preexisting right knee condition and necessitated surgery. After such further development as deemed necessary, the Office should issue a merit decision on appellant's entitlement to benefits under the Act.

CONCLUSION

The Board finds that the case requires further development on whether appellant sustained injury to his right knee on September 15, 2004.

⁸ See *John J. Carlone, supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the July 5, 2005 and November 9, 2004 decisions of the Office of Workers' Compensation Programs be set aside. The case is remanded to the Office for further action consistent with this decision.

Issued: March 10, 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