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J.B., Appellant)	
)	
and)	Docket No. 08-2009
)	Issued: April 7, 2009
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U.S. POSTAL SERVICE, POST OFFICE,)	
Plainfield, NJ, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On July 14, 2008 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated May 19, 2008 which denied modification of a prior decision denying his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

The issue is whether appellant has met his burden of proof in establishing that he developed a right knee condition while in the performance of duty.

On November 29, 2006 appellant, then a 56-year-old letter carrier, filed an occupational disease claim alleging that he developed osteoarthritis of the right knee while walking, lifting, casing and standing at work. He became aware of his condition on September 27, 2006. Appellant stopped work on September 22, 2006 and did not return.

In support of his claim, appellant submitted a statement and indicated that he worked as a letter carrier since 1974 and his job required him to carry a loaded satchel and walk approximately seven miles per day. He asserted that his job duties caused the diagnosed osteoarthritis of the right knee and indicated that he now required a total knee replacement. Appellant submitted a return to work certificate from Dr. Kevin A. McNeil, a Board-certified family practitioner, dated July 25, 2006, who noted that appellant was under his care until September 25, 2006 and could return to work on October 7, 2006.

The employing establishment submitted a letter of controversion dated December 4, 2006 which noted that appellant's return to work slip was not signed by a physician and appellant failed to note how long he was treated for his knee condition.

In a letter dated December 18, 2006, the Office advised appellant of the type of factual and medical evidence needed to establish his claim, particularly requesting that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

Appellant submitted a statement dated January 16, 2007 and advised that he sought treatment from Dr. Robert T. Goldman, a Board-certified orthopedist, and would be submitting a report shortly.

In a decision dated January 23, 2007, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that he sustained an injury as alleged.

On February 6, 2007 appellant requested reconsideration. He indicated that he had no history of knee trauma but had experienced right knee pain for a couple of years. Appellant submitted a job description for a mail carrier and a detailed list of his treating doctors and medical history. He submitted a magnetic resonance imaging (MRI) scan of the right knee dated October 26, 2005 which revealed degenerative joint disease, no definite meniscal tear, possibly a tear of the anterior cruciate ligament, a small joint effusion and subchondral edema.

Also submitted was an undated report from Dr. McNeil who diagnosed osteoarthritis of the left knee. Dr. McNeil noted that appellant was totally disabled. In a November 18, 2006 report, he noted first treating appellant on September 26, 2005 for osteoarthritis of the knees. Dr. McNeil diagnosed advanced osteoarthritis of the knees and opined that appellant was totally disabled since September 22, 2006. An August 25, 2006 report from Dr. Stuart J. Fischer, a Board-certified orthopedist, noted knee pain left greater than right. It further noted a lifting incident two weeks prior and felt his knee "go." Dr. Fischer noted full range of motion of the left knee and equivocal tenderness medially and anterior medially. He indicated that x-rays of the left knee revealed minimal degenerative changes. Dr. Fischer diagnosed meniscus tear on the right and synovitis of the left knee.

A September 27, 2006 report from Dr. Eric Mirsky, a Board-certified orthopedist, noted treating appellant for chronic right knee pain that recently worsened. Dr. Mirsky noted appellant was a letter carrier and had been totally disabled from work. He noted findings upon x-ray of advanced, tricompartmental degenerative changes consistent with osteoarthritis, medial joint space narrowing, osteophyte formation and varus deformity. Dr. Mirsky diagnosed advanced

osteoarthritis of the left knee. Also submitted was a January 29, 2007 report from Dr. Robert T. Goldman, a Board-certified orthopedist, who treated appellant on October 17 and November 21, 2006 for a right knee injury that had been present for a couple of years but had become progressively worse. Dr. Goldman diagnosed severe right knee osteoarthritis. He reviewed appellant's job description and noted that he was a letter carrier for 32 years and carried 35 pounds of mail in his mailbag up to six hours per day, for seven miles per day. Dr. Goldman noted that appellant's repetitive use of the knee joint over years of employment, mechanical stress on the joint and his age contributed to his cartilage degeneration. He opined that appellant's right knee osteoarthritis was accelerated by and aggravated by his job as a letter carrier. Dr. Goldman recommended a total knee replacement.

In a decision dated May 11, 2007, the Office denied modification of the January 23, 2007 decision. It noted that the factual and medical evidence was insufficient to support that appellant's claimed right knee osteoarthritis was causally related to the duties of his employment.

On February 19, 2008 appellant requested reconsideration. He submitted a statement and reiterated his allegation that his knee pain began in 2000 and was caused by his duties as a letter carrier which included extended walking and carrying a mailbag. Appellant indicated that he underwent a total right knee replacement in February 2007. He submitted an MRI scan of the right knee dated June 13, 2000 which revealed prominent bone bruises of the medial tibial plateau and medial femoral condyle and Grade 2 sprain of the medial collateral ligament.

A January 14, 2008 report from Dr. David Weiss, an osteopath, noted that appellant was a letter carrier since 1974 and was required to walk for extended periods of time and has experienced right knee pain since 2000. Dr. Weiss noted examination of the right knee revealed a well-healed surgical scar, limited range of motion, tenderness over the medial joint time, patellofemoral compression produces crepitus and marked crepitus over the medial joint compartment. He diagnosed cumulative and repetitive trauma disorder of the right knee, aggravation of preexisting quiescent degenerative joint disease of the right knee, chondromalacia patella to the right knee and status post right total knee replacement. Dr. Weiss opined that the work-related injury sustained due to the duties of employment was the competent producing factor for appellant's subjective and objective complaints. He determined that appellant had 50 percent impairment of the right leg for a right total knee replacement with fair results and reached maximum medical improvement on January 14, 2008.

Appellant also submitted a March 28, 2008 report from Dr. Goldman who noted first treating appellant on October 17, 2006 for bilateral knee pain, and noted performing arthroscopic surgery on the left knee on November 17, 2006. Dr. Goldman diagnosed torn medial meniscus and chondromalacia of the medial femoral condyle. He opined that appellant's job as a letter carrier required him to put a tremendous amount of stress on his knees and he felt that this would increase his need for a knee replacement in the future. Dr. Goldman noted performing a total right knee replacement on February 7, 2007 and advised that appellant was progressing well postoperatively.

In a decision dated May 19, 2008, the Office denied modification of the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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, that the 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion 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.²

ANALYSIS

Appellant alleged that he developed osteoarthritis of the right knee while performing his work duties as a letter carrier. In the instant case, it is not disputed that his duties as a letter carrier included prolonged standing and walking, bending, lifting and carrying a mailbag while performing his work duties.

The Office denied appellant's claim for compensation on the grounds that the medical evidence was not sufficient to establish that appellant's medical condition of osteoarthritis of the right knee was causally related to his employment. However, the Board notes that the medical evidence submitted by appellant generally supports that he developed osteoarthritis of the right knee due to prolonged standing and walking and carrying a mailbag. Specifically, Dr. Goldman noted in a report dated January 29, 2007, that he treated appellant on October 17 and November 21, 2006 for right knee pain, which was present for a couple of years but has become progressively worse. He noted that x-rays of the right knee revealed osteoarthritis and diagnosed

¹ Gary J. Watling, 52 ECAB 357 (2001).

² Solomon Polen, 51 ECAB 341 (2000).

severe osteoarthritis of the right knee. Dr. Goldman reviewed appellant's job description and noted that he was a letter carrier for 32 years and carried approximately 35 pounds of mail in a mailbag up to six hours per day. He noted that appellant's repetitive use of the knee joint over years of employment, mechanical stress on the joint and his age were all contributing factors for his cartilage degeneration. Dr. Goldman opined that appellant's osteoarthritis of the right knee was accelerated and aggravated by his employment as a letter carrier and recommended a total knee replacement. In a report dated March 28, 2008, he opined that appellant's job as a letter carrier required him to put a tremendous amount of stress on his knees which would increase his need for a knee replacement in the future. Also submitted was a report from Dr. Weiss dated January 14, 2008, who noted appellant was a letter carrier since 1974 and was required to walk for extended periods of time and has experienced right knee pain since 2000. Dr. Weiss diagnosed cumulative and repetitive trauma disorder of the right knee, aggravation of preexisting quiescent degenerative joint disease of the right knee, chondromalacia patella of the right knee and status post right total knee replacement. He opined that appellant's knee injury was the result of performing the duties of his employment and was the competent producing factor for appellant's subjective and objective complaints.

Although these physician's opinions are not sufficiently rationalized to carry 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 by the Office.³ Proceedings under the Act are not adversary in nature nor is the Office a disinterested arbiter. While the claimant 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.⁴ In view of the noted medical evidence, the Office should have referred the matter to an appropriate medical specialist to determine whether appellant may have developed osteoarthritis of the right knee as a result of his employment duties.

Therefore, the Board finds that the case must be remanded to the Office for preparation of a statement of accepted facts concerning appellant's working conditions and referral of the matter to an appropriate medical specialist, consistent with Office procedures, to determine whether appellant may have developed osteoarthritis of the right knee as a result of performing his employment duties. 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.

³ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁴ *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2008 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: April 7, 2009
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board