United States Department of Labor
Employees' Compensation Appeals Board

J.A., Appellant	)	
and	)	**Docket No. 08-2143**
	)	**Issued: June 23, 2009**
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION & NATURALIZATION SERVICE, New York, NY, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 30, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 8, 2007 and an October 30, 2007 decision denying further 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 established a recurrence of a medical condition on January 1, 2007; and (2) whether the Office properly determined his application for reconsideration was insufficient to warrant merit review of the claim.

FACTUAL HISTORY

The Office accepted that appellant sustained a right ankle sprain and right knee medial meniscus tear on November 9, 1997.[1] Appellant filed a recurrence (Form CA-2a) for

[1] Appellant reported he was struck by a cart on the side of his leg.

August 7, 1998. He stated that he went to pick up a box of cases, and after taking the cases to his office, he felt back pain. Since appellant described a new work injury, the case was adjudicated as a claim for a new injury. The Office accepted aggravation of right knee medial meniscus tear, right ankle sprain and lumbago. Appellant stopped working as May 1999. He began working full time in private employment on April 21, 2003. By decision dated June 28, 2005, the Office issued a schedule award for a 12 percent right leg permanent impairment.

On January 30, 2007 appellant filed a Form CA-2a indicated he was seeking "medical treatment only" for a recurrence on January 1, 2007. He stated that, while he was walking, his right knee began to wobble and he fell on his left knee and then his right knee. In a report dated January 4, 2007, Dr. Norman Sveilich, an osteopath, reported that on January 1, 2007 appellant was walking home when his right knee gave way and he landed on his knees, with knee swelling as a result. He noted that appellant had a 1998 injury "twisting right knee losing balance," with surgery in 1998 or 1999. Dr. Sveilich provided results on examination and diagnosed acute medical meniscus tear of the left knee, and strains of the left buttock, thigh and leg.

A magnetic resonance imaging (MRI) scan of the right knee dated January 25, 2007 reported an oblique tear of the posterior medial meniscus. In a report dated February 1, 2007, Dr. Sveilich provided results on examination. He stated, "If the history as given by [appellant] is accurate, then the injury sustained at work is a direct contributing cause of the present problem. The right knee giving way is related to causing the left knee problem."

By decision dated May 2, 2007, the Office denied the claim on the grounds that the medical evidence was insufficient to establish the claim. Appellant requested reconsideration and submitted additional medical reports from Dr. Sveilich. On May 28, 2007 Dr. Sveilich noted that in a June 10, 2003 report regarding permanent impairment he had found recurrent weakness and "prognosis for recovery is poor." He stated that, due to the poor prognosis in 2003 and if the history given was correct, there was "a medical certainty that the injuries sustained on January 4, 2007 [are] causally related to the original accident which occurred on August 7, 1998."

By decision dated August 8, 2007, the Office reviewed the case on its merits and denied modification. Appellant again requested reconsideration of his claim on October 7, 2007. He submitted reports dated August 6, September 4 and October 8, 2007 from Dr. Sveilich. The reports contained the same history and opinion on causal relationship presented in the February 1, 2007 report.

By decision dated October 30, 2007, the Office determined the application for reconsideration was insufficient to warrant further merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of a medical condition is defined in the Office's procedure manual as "the documented need for further treatment of the accepted condition when there is no work stoppage."[2] When a claim for a recurrence of medical condition is made more than 90 days after release from medical care, a claimant is responsible for submitting a medical report that contains

[2] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(a) (January 1998).

a description of objective findings and supports causal relationship between the claimant's current condition and the previous work injury.[3]

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the employment injury. The opinion of the physician must be based on a complete and accurate factual and medical history, supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the employment injury.[4] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[5]

ANALYSIS -- ISSUE 1

Although the Office has referred to a claim for a recurrence of disability as of January 4, 2007, the claim filed was a Form CA-2a for medical treatment as of January 1, 2007. Appellant indicated that he was walking and his right knee gave way and he fell. To be entitled to medical benefits, he must establish that his right knee condition on January 1, 2007 was employment related.

The reports of record from Dr. Sveilich are not sufficient to establish a diagnosed right knee condition causally related to federal employment as January 1, 2007. As noted, a rationalized opinion must be based on a complete factual and medical background. Dr. Sveilich referred only briefly to a twisting injury in 1998, without providing further detail regarding the August 7, 1998 employment incident. The record indicates there was a right knee injury on November 19, 1997, with surgery in February 1998 and October 1999. The accepted employment injury from August 7, 1998 was an aggravation of a medical meniscus tear. Dr. Sveilich did not provide a complete history with a clear description of the employment injuries and the relevant medical treatment.

With respect to a right knee diagnosis as January 1, 2007, Dr. Sveilich did not provide a rationalized medical opinion. To the extent that the diagnosis is an oblique tear of the posterior medial meniscus, as demonstrated by a January 25, 2007 MRI scan, he did not adequately address the causal relationship with appellant's accepted injury employment. In May 28, 2007 report, Dr. Sveilich noted that, because he had reported a poor prognosis on June 10, 2003, he believed the January 2007 injuries were causally related to an August 7, 1998 injury. The June 10, 2003 report stated only briefly that prognosis for recovery was poor, without further explanation. Dr. Sveilich did not explain what he believed happened to appellant's right knee on August 7, 1998 or why, in view of the relevant medical record, appellant's diagnosed condition on January 1, 2007 was causally related to the August 7, 1998 injury. It is appellant's burden of

[3] *Id*. at Chapter 2.1500.5(b) (September 2003).

[4] *Helen K. Hunt*, 50 ECAB 279 (1999).

[5] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

proof to submit probative medical opinion. The Board finds he did not meet his burden in this case.

LEGAL PRECEDENT -- ISSUE 2

The Federal Employees' Compensation Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision.[6] The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[7]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent evidence not previously considered by the Office.[8]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meet at least one of these standards. If reconsideration is granted, the case is reopened, and the case is reviewed on its merits. Where the request is timely, but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[9]

ANALYSIS -- ISSUE 2

With his application for reconsideration, appellant submitted additional reports from Dr. Sveilich, which were similar to prior reports and provided no new and relevant evidence on the issue of causal relationship between appellant's condition on January 1, 2007 and the employment injuries. The Board finds appellant did not submit relevant and pertinent evidence not previously considered by the Office.

In his October 7, 2007 application for reconsideration, appellant noted that he had received a schedule award for his right leg. But the issue in this case is a recurrence of an employment-related condition as of January 1, 2007. Appellant did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office.

[6] 5 U.S.C. § 8128(a).

[7] 20 C.F.R. § 10.605 (1999).

[8] *Id*. at § 10.606(b)(2).

[9] *Id*. at § 10.608.

Since appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2), he is not entitled to a merit review of his claim. The Office properly refused to reopen the claim for a merit review.

CONCLUSION

The Board finds appellant did not meet his burden of proof to establish a recurrence of an employment-related medical condition as of January 1, 2007. Appellant did not meet the requirements of 20 C.F.R. § 10.606(b)(2) with his October 7, 2007 application for reconsideration and therefore the Office properly denied merit review.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 30 and August 8, 2007 are affirmed.

Issued: June 23, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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