

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

C.B., Appellant)

and)

DEPARTMENT OF THE ARMY, ANNISTON)
ARMY DEPOT, Anniston, AL, Employer)

Docket No. 09-1144
Issued: November 18, 2009

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 24, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 11, 2009 merit decision denying modification of a December 29, 2008 merit decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established he sustained an injury in the performance of duty on August 23, 2008 causally related to his employment.

FACTUAL HISTORY

On August 27, 2008 appellant, a 29-year-old "heavy equipment repairer," filed a traumatic injury claim (Form CA-1) for a left knee injury that he alleged occurred on August 23, 2008 while lifting an M-88 housing while on temporary duty in Iraq.

Appellant submitted a report from the employing establishment's medical unit.¹ He submitted notes signed by Dr. Gordon T. Hardy, a Board-certified orthopedic surgeon, dated August 27, October 14 and 23, 2008, diagnosing left knee contusion, sprain with anterior cruciate ligament (ACL) injury, lateral meniscus tear as well as exacerbation of arthritis.

By report dated October 17, 2008, Dr. Robert F. Garner, a Board-certified diagnostic radiologist, stated that a magnetic resonance imaging (MRI) scan of appellant's left knee revealed a complex tear of the lateral meniscus and degenerative changes in the knee joint space.

By decision dated December 29, 2008, the Office denied appellant's claim because the evidence of record did not demonstrate that the employment incident occurred as alleged.

On January 5, 2009 appellant requested reconsideration.

Appellant submitted a note dated January 5, 2009, in which a coworker reported witnessing appellant's injury and a report dated January 7, 2009 in which Dr. Hardy reviewed appellant's history of injury. Dr. Hardy stated that on August 26, 2008 appellant was "working at 'AAD,' sitting in a chair moving something when he felt a large pop in his knee." He also related that appellant had a previous injury in Iraq on February 15, 2008 which was a lower leg injury and not specific to his knee. Dr. Hardy noted that appellant had been treated in November 2007 for knee sprain, which had resolved prior to being sent to Iraq. He concluded as follows: "I believe he tore his ACL graft at the time of an on-the-job injury. He relates it most specifically to the August 2008 event." Appellant also submitted a note dated February 19, 2009 in which he described his injury and how it occurred.

By decision dated March 11, 2009, the Office accepted that the incident occurred as alleged but nonetheless denied the claim because the evidence of record did not establish that appellant's condition was caused by the accepted employment incident.

LEGAL PRECEDENT

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.² Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.³

¹ The Board notes that the Office issued a Form CA-16. A properly executed Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. See *Elaine M. Kreyborg*, 41 ECAB 256, 259 (1989). The Form CA-16 issued to appellant authorized examination and treatment and was therefore properly executed.

² *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

³ *T.H.*, 59 ECAB ____ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

An employee has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition is causally related to factors of his employment. Where an employee is on temporary-duty assignment away from his federal employment he is covered by the Federal Employees' Compensation Act 24 hours a day with respect to any injury that results from activities essential or incidental to his temporary assignment. However, the fact that an employee is on a special mission or in travel status during the time a disabling condition manifests itself does not raise an inference that the condition is causally related to the incidents of employment.⁴

ANALYSIS

The Office has accepted that the incident occurred as alleged while appellant was on temporary duty in Iraq. Appellant's burden is to demonstrate that the accepted employment incident caused a personal injury. Causal relationship is a medical issue that can only be proven by competent, probative medical evidence.⁵ The Board finds the evidence of record insufficient to establish appellant's claim.

The relevant evidence of record consists of reports and notes signed by Drs. Hardy and Garner. This evidence is of no probative value on the issue of causal relationship as it lacks a rationalized medical opinion concerning the causal relationship between the accepted employment incident and the conditions diagnosed.⁶ Dr. Hardy attempted to address causal relationship in his report dated January 7, 2009. He related that appellant had a previous knee strain in November 2007, which had resolved, and that he had another lower leg injury in February 2008 that was not specific to his knee. Dr. Hardy also related that appellant had told him that he was seated in a chair on August 26, 2008 "moving something" when he felt a large pop in his knee. While he reported appellant's account of the August 26, 2008 incident Dr. Hardy did not provide his own medical opinion explaining with medical rationale, how "moving something" while seated in a chair would have caused appellant's diagnosed conditions. As such, this evidence is insufficient to establish appellant's claim. The reports from Dr. Garner provided findings from an MRI examination, but offered no opinion regarding the cause of the diagnosed conditions.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to

⁴ *Susan A. Filkins*, 57 ECAB 630 (2006).

⁵ The Board notes that appellant submitted reports from a physical therapist. Because healthcare providers such as nurses, acupuncturists, physician's assistants and physical therapists are not considered "physicians" under the Act, their reports and opinions do not constitute competent medical evidence. (5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB ___ (Docket No. 06-1564, issued February 27, 2007); *Jerré R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983). Thus the physical therapy reports appellant submitted are of no probative value.

⁶ *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). *Franklin D. Haislah*, 52 ECAB 457 (2001); *see also Jimmie H. Duckett*, 52 ECAB 332 (2001).

establish causal relationship.⁷ Appellant has not submitted sufficient evidence in support of his claim and therefore has not established that he sustained an injury in the performance of duty on August 23, 2008 causally related to his employment.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury in the performance of duty on August 23, 2008 causally related to his employment.

ORDER

IT IS HEREBY ORDERED THAT the March 11, 2009 and December 29, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 18, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁷ *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).