

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

P.B., Appellant

and

**DEPARTMENT OF THE INTERIOR, BUREAU
OF INDIAN AFFAIRS, Tonalea, AZ, Employer**

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**Docket No. 09-2222
Issued: August 10, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 3, 2009 appellant filed a timely appeal from the August 3, 2009 merit decision of the Office of Workers' Compensation Programs, which found that he did not sustain a traumatic injury. 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 sustained a back condition causally related to the August 3, 2007 employment incident.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated March 6, 2008, the Office had denied appellant's August 5, 2007 traumatic injury claim. It accepted that he fell from a ladder on August 3, 2007, but found that the medical evidence did not establish an injury. In a decision dated March 12, 2009, the Board remanded the case to the Office for further

development of the medical evidence.¹ The facts and circumstances contained in the Board's prior decision are incorporated herein by reference.

On remand, the Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. Michael G. Klassen, a Board-certified orthopedic surgeon, for an opinion as to whether he had sustained injury as a result of the accepted August 3, 2007 incident. Noting that appellant's physicians had diagnosed numerous conditions, including degenerative knee issues, lumbar degenerative disc disease, spinal stenosis, contusions and sprains, the Office asked Dr. Klassen to specify whether any of the diagnosed conditions were causally related to the accepted work incident and, if so, to explain how.

In a June 26, 2009 report, Dr. Klassen reviewed appellant's factual and medical history and provided findings on examination, "limited to an evaluation of the right elbow and bilateral knees." Range of motion of the right elbow was within normal limits, and there was no tenderness, varus or valgus laxity or pain. Examination of the knees revealed medial joint line tenderness. Dr. Klassen did not provide any findings related to appellant's back. He diagnosed right knee arthritis, meniscal tear, left knee arthritis and right elbow resolved. Dr. Klassen stated that the diagnosed conditions referenced by the Office were medically connected to appellant's August 3, 2007 injury and advised that he had been disabled since the date of injury. He noted that appellant sustained a significant fall that caused the arthritis in his knees to flare up and may have caused his meniscus to go from being slightly degenerated to torn. Dr. Klassen opined that appellant's condition was caused, rather than aggravated, by the fall, as he did not have any significant complaints prior to falling off the ladder. In a July 6, 2009 work capacity evaluation, he noted that appellant required surgery and was disabled for his usual job.

On July 14, 2009 the Office asked Dr. Klassen for a supplemental report, noting that he had addressed only appellant's knees and right elbow. It asked him for an opinion whether the back conditions diagnosed by appellant's physicians were causally related to the August 3, 2007 incident. Dr. Klassen was also asked to clarify whether appellant sustained a meniscus tear to either knee and whether temporary or permanent aggravation was indicated.

On July 16, 2009 Dr. Klassen diagnosed arthritis, medial meniscus tear and anterior cruciate ligament strain of the right knee; arthritis, medial meniscus tear and lateral meniscus tear of the left knee; posterior tibial tendinitis, peroneous brevis tendinitis and pain of the left ankle. In response to the Office's inquiry as to whether any diagnosed conditions, including degenerative knee issues, lumbar degenerative disc disease, spinal stenosis, contusions and sprains, were causally related to the August 3, 2007 incident, he stated, "Yes, these diagnoses are all work related." In response to the question as to whether appellant sustained a back injury as a result of the accepted incident, Dr. Klassen responded, "No." He opined that appellant had not experienced an aggravation of any condition. Rather, the cause of his conditions was the fall, as he did not have any significant complaints prior to falling off the ladder.

In an August 3, 2009 decision, the Office accepted appellant's claim for bilateral knee arthritis, bilateral medial meniscus tear, right knee anterior cruciate ligament strain, left lateral meniscus tear, right knee posterior tibial and peroneous brevis tendinitis, left ankle contusion and

¹ Docket No. 08-1337 (issued March 12, 2009).

right elbow strain, resolved. It denied his claim for a back injury causally related to the accepted incident.

LEGAL PRECEDENT

The Federal Employees' Compensation Act² provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.³ The phrase sustained while in the performance of duty is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.⁴

An employee seeking benefits under the Act has the burden of proof to establish that 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 an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the fact of injury, namely, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged and that such event, incident or exposure caused an injury.⁶

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁷ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that

² 5 U.S.C. § 8101 *et seq.*

³ *Id.* at 8102(a).

⁴ This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

⁵ *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989). *See also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift). (Traumatic injury means a condition of the body caused by a specific event or incident, or a series of events or incidents, within a single workday or shift.)

⁶ *Tracey P. Spillane*, 54 ECAB 608 (2003); *see also Betty A. Smith*, 54 ECAB 174 (2002). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

⁷ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁸

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.⁹

Once the Office undertakes to develop the medical evidence further, it has the responsibility to do in a manner that will resolve the relevant issues in the case.¹⁰

ANALYSIS

The Board finds that this case is not in posture for a decision as to whether appellant sustained a back injury causally related to the accepted August 3, 2007 incident. The case will be remanded to the Office for further development of the medical evidence.

Following the prior appeal, the Office referred appellant to Dr. Klassen for an opinion as to whether he sustained any injury as a result of the August 3, 2007 incident. It asked Dr. Klassen to address whether appellant sustained any back injury and to provide rationale for his opinion. However, Dr. Klassen's reports are not sufficient to resolve this issue.

Dr. Klassen's June 26, 2009 report did not fully address all of the issues presented to him by the Office. The Office noted that appellant's physicians had diagnosed various conditions, including degenerative knee issues, lumbar degenerative disc disease, spinal stenosis, contusions and sprains. It inquired whether any of the diagnosed conditions were causally related to the accepted incident. Although Dr. Klassen stated that the conditions identified were caused by the accepted incident, he did not provide any examination findings or a definitive opinion as to whether appellant sustained a back injury on August 3, 2007. Rather, he specifically stated that he focused on the knees and ankles during his initial examination of appellant. Dr. Klassen's report did not resolve the issue concerning appellant's diagnosed back conditions.

Dr. Klassen's July 16, 2009 supplemental report also failed to provide sufficient response to the Office. Specifically, he was asked to clarify whether appellant sustained any back injury as a result of the August 3, 2007 incident. In response, Dr. Klassen gave a one-word response, "No." He provided no findings from examination or medical reasoning in support of his conclusion.¹¹ The Board has held that a medical opinion that is not fortified by rationale is of

⁸ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁹ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁰ *Melvin James*, 55 ECAB 406 (2004).

¹¹ *See Elaine Sneed*, 56 ECAB 373 (2005).

diminished probative value.¹² The Board notes that Dr. Klassen's negative response is inconsistent with his prior statement that the previously diagnosed conditions, including lumbar degenerative disc disease, spinal stenosis, contusions and sprains, were "all work related."

The Office properly requested clarification from Dr. Klassen in light of the deficiencies to fully respond to the questions presented to him.¹³ As Dr. Klassen's supplemental report lacked objective findings or any rationale regarding appellant's back condition, it should refer appellant to another physician for the purpose of obtaining a rationalized medical opinion on the issue.¹⁴

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter.¹⁵ While a claimant has the responsibility to establish entitlement to compensation, it shares responsibility in the development of the evidence. The Office has the obligation to see that justice is done.¹⁶ Once it undertakes to develop the medical evidence, it has the responsibility to do so in the proper manner.¹⁷ The case will be remanded to the Office to further develop the medical evidence. The case should be referred to another appropriate specialist. After such further development as the Office deems necessary, an appropriate decision should be issued regarding this matter.

CONCLUSION

The Board finds that the case is not in posture for decision on whether appellant sustained a back condition related to the August 3, 2007 employment incident.

¹² *Cecilia M. Corley*, 56 ECAB 662 (2005).

¹³ *L.R.*, 58 ECAB 369 (2007); *Phillip H. Conte*, 56 ECAB 213 (2004); *Guiseppe Aversa*, 55 ECAB 164 (2003).

¹⁴ *Nancy Keenan*, 56 ECAB 687 (2005); *Talmadge Miller*, 47 ECAB 673 (1995); *Harold Travis*, 30 ECAB 1071 (1979); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810(11)(c)(1)-(2) (April 1993).

¹⁵ *Vanessa Young*, 55 ECAB 575 (2004).

¹⁶ *Richard E. Simpson*, 55 ECAB 490 (2004).

¹⁷ *Melvin James*, *supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2009 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this decision of the Board.

Issued: August 10, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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