United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 09-2344**
	)	**Issued: August 25, 2010**
DEPARTMENT OF THE AIR FORCE, ELGIN AIR FORCE BASE, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On September 25, 2009 appellant filed a timely appeal from the October 16, 2008 and March 23, 2009 merit decisions of the Office of Workers' Compensation Programs denying his traumatic injury claim. 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 an injury while in the performance of duty on August 25, 2008.

FACTUAL HISTORY

On September 2, 2008 appellant, a 43-year-old lead firefighter, filed a traumatic injury claim alleging that he sustained injuries to his left knee while exiting a crash equipment vehicle on August 25, 2008.

In a letter dated September 9, 2008, the Office informed appellant that he had not submitted sufficient information or evidence to establish his claim. Appellant was advised to

provide a detailed account of the alleged injury and a physician's report, with a diagnosis and a rationalized opinion as to how the diagnosed condition was caused by the claimed event.

Appellant submitted physical therapy records dated April 22 and August 28, 2008. On April 22, 2008 Robert Mann, a physical therapist, stated that appellant had undergone prior knee surgery on November 20, 2007 and experienced constant pain with prolonged standing. On August 28, 2008 Jeri M. Hartzog, a doctor of physical therapy (DPT), noted that appellant was nine months postarthroscopic debridement and lateral meniscus repair of the left knee and had recently collapsed when his knee gave way. He stated that appellant had experienced a decreased range of motion over the past four months, as well as left knee pain and decreased function.

In a September 3, 2008 report, Dr. Leo C. Chen, a Board-certified orthopedic surgeon, stated that appellant developed sharp pain and swelling in his left knee suddenly approximately one week earlier. There was no history of a specific injury, nor did he notice the rapid onset of swelling. Basically, appellant "just noticed the problem." Examination of the left knee revealed tenderness at the general anterior aspect of the knee. There was no ecchymosis, crepitus or atrophy. Lateral subluxation was not palpably present and there was no significant deformity. Appellant was able to do a straight leg lift. The anterior drawer test, lateral pivot shift test and lateral pivot shift grind test were negative. The Lachman test was negative. The medial and lateral collateral ligaments were stable both in flexion and extension. The posterior drawer test, reverse lateral pivot shift test and sag test were negative. Dr. Chen diagnosed left knee pain and possible torn lateral meniscus. He stated that, due to the nature of the injury, the problem may recur and the symptoms may progress.

In a September 5, 2008 attending physician's report, Dr. Chen described the history of injury as twisted left knee. He diagnosed left knee sprain and indicated by placing a checkmark in the "yes" box that the injury was caused or aggravated by the employment activity described. Dr. Chen noted that appellant had no preexisting condition. On September 17, 2008 he reiterated that appellant had no history of specific injury.

In a decision dated October 16, 2008, the Office denied appellant's claim. It accepted that the August 25, 2008 incident occurred as alleged, but found there was insufficient medical evidence to establish that the incident caused injury to his left knee.

On November 18, 2008 appellant requested review of the written record. In a November 17, 2008 report, Dr. Chen stated that magnetic resonance imaging (MRI) scan changes were consistent with a possible tear in the medial meniscus.[1] He provided a November 4, 2008 report of a functional capacity evaluation, which was performed by Brenda J. Royster, a work strategies manager, who determined that appellant was capable of performing the very heavy work of a fire fighter. Appellant informed her that his left knee symptoms increased on July 10 and August10, 2008.

[1] The record contains reports of MRI scans dated September 28, 2007 and October 8, 2008.

By decision dated March 23, 2009, the Office affirmed its October 16, 2008 decision.[2]

LEGAL PRECEDENT

The Federal Employees' Compensation Act 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 the essential elements of his 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, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[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.[8] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is

[2] The Board notes that appellant submitted additional evidence after the Office rendered its November 18, 2005 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

[3] 5 U.S.C. § 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).

[6] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. 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).

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

sufficient to establish a causal relationship.[9] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[10]

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 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.[11]

ANALYSIS

The Office accepted that appellant was a federal employee, that he timely filed his claim for compensation benefits and that the August 25, 2008 workplace incident occurred as alleged. The issue, therefore, is whether he submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence of record does not contain a rationalized medical opinion from a qualified physician establishing that the work-related accident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy his burden of proof.

Reports from appellant's treating physician, Dr. Chen, are insufficient to establish his claim. On September 3, 2008 Dr. Chen diagnosed left knee pain and possible torn lateral meniscus. His diagnosis is speculative and without objective physical or diagnostic findings to support a condition causing the pain, is not compensable under the Act.[12] Dr. Chen offered no opinion on the cause of appellant's condition. He stated that appellant developed sharp pain and swelling in his left knee suddenly approximately one week earlier, that there was no history of a specific injury and that appellant did not notice the rapid onset of swelling. Basically, appellant "just noticed the problem." Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[13]

In a September 5, 2008 attending physician's report, Dr. Chen described the history of injury as "twisted left knee." He diagnosed left knee sprain and indicated by placing a checkmark in the "yes" box that the injury was caused or aggravated by the employment activity described. A mere checkmark or affirmative notation in response to a form question on causal relationship is not sufficient to establish a claim.[14] Dr. Chen did not describe how the accepted

[9] *Id.*

[10] 20 C.F.R. § 10.303(a).

[11] *John W. Montoya*, 54 ECAB 306 (2003).

[12] *See John L. Clark*, 32 ECAB 1618 (1981).

[13] *Michael E. Smith*, 50 ECAB 313 (1999).

[14] *See Gary J. Watling*, 52 ECAB 278 (2001).

event, namely, exiting a vehicle, was competent to cause appellant's diagnosed condition. His report did not refer to the August 25, 2008 incident as a possible cause of the diagnosed sprain. The Board notes that Dr. Chen indicated that appellant had no preexisting condition. The record is clear, however, that appellant suffered from a left knee condition for which he underwent surgery on November 20, 2007. Therefore, Dr. Chen's report is based on an inaccurate medical history and is of diminished probative value.

Dr. Chen's September 17 and November 17, 2008 reports do not contain an opinion on causal relationship and are therefore of limited probative value. As they reflect that appellant did not recall any history of specific injury, they undermine his claim that his left knee condition was caused by the August 25, 2008 incident.

On April 22, 2008 Robert Mann, a physical therapist, stated that appellant had undergone knee surgery on November 20, 2007 and that he was experiencing constant pain with prolonged standing. On August 28, 2008 Jeri M. Hartzog, a physical therapist, noted that appellant was nine months postarthroscopic debridement and lateral meniscus repair of the left knee and had recently collapsed when his knee gave way. As a physical therapist is not considered a "physician" under the Act, these reports do not constitute probative medical evidence.[15] Similarly, the November 4, 2008 report of a functional capacity evaluation, which was performed by Ms. Royster, a work strategies manager, does not constitute probative medical evidence. The remaining medical evidence of record (including MRI scan reports) which does not contain an opinion on causal relationship, is of limited probative value and insufficient to establish appellant's claim.

The record does not provide sufficient opinion from a physician supporting appellant's contention that his condition was causally related to the August 25, 2008 incident. Appellant expressed his belief that his left knee condition resulted from the accepted employment incident. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[16] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[17] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by the work-related incident is not determinative.

[15] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as "physician" as defined in 5 U.S.C. § 8101(2). Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

The Board notes that Ms. Hartzog refers to herself as a DPT. A DPT is a postbaccalaureate degree conferred upon successful completion of a doctoral level professional or postprofessional physical therapy education program. Therefore, Ms. Hartzog is not considered to be a physician under the Act.

[16] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[17] *Id.*

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment, and the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how his claimed condition was caused or aggravated by his employment, appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty causally related to factors of his federal employment.

On appeal, appellant submitted additional evidence, which he contends establishes that his left knee condition was caused by the August 25, 2008 work incident. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board.[18] Appellant may submit this evidence to the Office, together with a request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a traumatic injury in the performance of duty on August 25, 2008.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 23, 2009 and October 16, 2008 are affirmed.

Issued: August 25, 2010
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

[18] 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).