

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

M.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Lancaster, PA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 10-262
Issued: August 20, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 4, 2009 appellant filed a timely appeal of an October 7, 2009 decision of the Office of Workers' Compensation Programs denying his claim for compensation. 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 met his burden of proof to establish that he sustained a traumatic injury on July 11, 2009 in the performance of duty.

FACTUAL HISTORY

On August 25, 2009 appellant, then a 34-year-old letter carrier, filed a traumatic injury claim alleging that on July 11, 2009 he injured his right knee after tripping on an uneven sidewalk while delivering mail. He did not stop work.

In an August 24, 2009 duty status report, Dr. Pierre Caron, a Board-certified family practitioner, found effusion of the right knee. He diagnosed intra-articular derangement. Dr. Caron advised that appellant could return to work on August 25, 2009 with restrictions. In a

report of the same date, he noted that appellant could return to work on August 25, 2009 with restrictions including intermittent walking, sitting with no loading of the right knee, no lifting over 35 pounds and no standing or walking more than two hours until magnetic resonance imaging (MRI) scan results were available.

On September 4, 2009 the Office advised appellant of the factual and medical evidence necessary to establish his claim and allowed him 30 days to submit such evidence.

Appellant submitted an August 31, 2009 report from Dr. James Carson, a Board-certified orthopedic surgeon, who noted that he sought treatment for his right knee after stumbling on July 11, 2009. Dr. Carson also noted that appellant reported his knee pain got better, but that over the prior weekend his knee became swollen. Appellant experienced pain with stairs and bent knee activity. Upon examination, Dr. Carson found appellant's knee was ligamentously stable, had no joint line tenderness and was neurovascularly intact. He diagnosed right knee pain and swelling after injury six weeks prior. Dr. Carson reviewed MRI scan results showing some bone bruising in the patella and some patellofemoral chondral changes. He indicated that this condition may have been because appellant injured his knee and irritated it, then had some quadriceps weakness after which rendered the patellofemoral problem symptomatic. Dr. Carson recommended physical therapy.

On September 9, 2009 the employing establishment offered a modified assignment as a letter carrier that appellant accepted. Appellant submitted physical therapy notes from September 14 and 22, 2009.

In an undated statement, appellant noted he was delivering mail on July 11, 2009 when he tripped on an uneven sidewalk. He stepped down on his right leg while attempting to regain balance causing him to "jar his right knee." Appellant noted feeling soreness and pain in his right knee immediately after this incident. He reported the incident to his supervisor that day, but did not seek immediate treatment as he only felt sore at the time. Appellant continued reporting to work and believed the soreness would go away. He woke up on August 23, 2009 with right knee stiffness and swelling. Appellant sought treatment with Dr. Caron on August 24, 2009 and was placed on work restrictions. He noted that Dr. Caron referred him for an MRI scan which revealed cartilage damage.

In an October 7, 2009 decision, the Office denied appellant's claim finding that the medical evidence did not demonstrate that the claimed medical condition was related to his established work-related event.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is

¹ 5 U.S.C. §§ 8101-8193.

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 on a traumatic injury or an occupational disease.²

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a “fact of injury” has been established. 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.³

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, which includes a physician’s rationalized opinion on whether there is a causal relationship between the employee’s diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁴

ANALYSIS

The record establishes that appellant tripped on an uneven sidewalk on July 11, 2009 in the performance of duty. The medical evidence is insufficient to establish that incident caused or aggravated his right knee condition.

In an August 31, 2009 report, Dr. Carson noted appellant’s report of right knee pain after stumbling on July 11, 2009. His examination advised that appellant’s knee was ligamentously stable, had no joint line tenderness and was neurovascularly intact. Dr. Carson also found bone bruising in the patella and some patellofemoral chondral changes that he opined may have been due to appellant’s knee injury. He diagnosed right knee pain and swelling after sustaining injury six weeks prior. To the extent that this report may be construed as supporting causal relationship, Dr. Carson’s report is of limited probative value as it is couched in speculative terms.⁵ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, neither can such opinion be speculative or equivocal. The opinion should be one of reasonable medical certainty and must be supported by medical rationale.⁶

² *S.P.*, 59 ECAB ____ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *Id.*

⁴ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ *Kathy Kelley*, 55 ECAB 206 (2004) (the Board has held that opinions such as, the implant “may have ruptured” and that the condition is “probably” related, “most likely” related or “could be” related are speculative and diminish the probative value of the medical opinion).

⁶ *See S.E.*, 60 ECAB ____ (Docket No. 08-2214, issued May 6, 2009).

Dr. Carson did not provide an unequivocal opinion explaining the reasons the July 11, 2009 work incident, tripping on an uneven sidewalk, would cause patella bruising or any other diagnosed medical condition.

Dr. Caron's reports diagnosed intra-articular derangement of the right knee and listed appellant's work restrictions. He did not address the issue of causal relationship or discuss whether the July 11, 2009 incident caused or aggravated appellant's right knee condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁷

The record also contains physical therapy notes dated between September 14 and 22, 2009. Reports of appellant's physical therapists are of no probative value as physical therapists are not considered physicians under the Act and as a result, they are not competent to provide a medical opinion.⁸

On appeal appellant asserts that Dr. Carson's September 28, 2009 report supports his claim and that both he and Dr. Carson submitted this report to the record prior to the issuance of the Office's October 7, 2009 decision. The Board's review of the record reflects that this report was not received by the Office before issuance of its October 7, 2009 decision. Appellant also submitted Dr. Carson's September 28, 2009 report with his appeal request, but the Board may not consider new evidence on appeal as its jurisdiction is limited to the review of the evidence that was in the record at the time the Office issued its final decision.⁹

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a traumatic injury on July 11, 2009 in the performance of duty.

⁷ *S.E.*, 60 ECAB ____ (Docket No. 08-2214, issued May 6, 2009).

⁸ *Barbara Williams*, 40 ECAB 649 (1989). *See A.C.*, 60 ECAB ____ (Docket No. 08-1453, issued November 18, 2008); *see also* 5 U.S.C. § 8101(2).

⁹ 20 C.F.R. § 501.2(c). This decision of the Board does not preclude appellant from submitting such evidence to the Office as part of a request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated October 7, 2009 is affirmed.

Issued: August 20, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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