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R.B., Appellant	)	
	)	Docket No. 10-948
and	)	Issued: December 17, 2010
	)	
U.S. POSTAL SERVICE, POST OFFICE,	)	
Phoenix, AZ, Employer	)	
	)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

On February 24, 2010 appellant filed a timely appeal from the January 14, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.¹

The issue is whether appellant has met his burden of proof in establishing that his leg condition is causally related to his July 28, 2009 employment incident, as alleged.

¹ The Board notes that, following the issuance of the January 24, 2010 Office decision and on appeal, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence, together with a formal written request for reconsideration to the Office, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

FACTUAL HISTORY

On July 31, 2009 appellant, then a 67-year-old letter carrier, filed a traumatic injury (Form CA-1) alleging that on July 28, 2009 he stubbed his toe and sustained an injury to the calf of his left leg while delivering his route. On the claim form, the employing establishment controverted continuation of pay because there was “[n]o medical to support accident/injury.” On July 28, 2009 appellant was treated in the emergency room at St. Joseph’s Hospital, Phoenix, AZ and diagnosed with “leg swelling” by Dr. LaFrabya Mitchem-Westbrook, Board-certified in emergency medicine.

On August 17, 2009 the Office requested additional factual and medical information from appellant. It found that the evidence submitted was insufficient to establish an employment-related injury to his left calf and requested factual information from him. The Office allotted appellant 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a medical report dated August 3, 2009 by Dr. Joe K. Reid. An ultrasound Doppler test of his lower left extremity revealed “a large mass extending from the proximal medial left calf to the popliteal fossa posteriorly measuring 4.8 x 2.9 x 4.0 [centimeters].” Dr. Reid reported “[n]ormal compressibility and augmentation [and n]o evidence of [deep vein thrombosis] DVT.” He indicated that the mass was of “uncertain etiology” and suggested further evaluation with magnetic resonance imaging (MRI) scan.

Appellant submitted two medical reports both dated August 5, 2009 by Dr. John Lin, a Board-certified diagnostic radiologist. In a report regarding an MRI scan of his lower leg, Dr. Lin found it “difficult to determine whether [the mass arose] from the muscle or is located in the fascial plane.” He gave his impression that there was concern for an “aggressive lesion, including soft tissue sarcoma, such as malignant fibrohistiocytoma” and that “[i]f there had been some significant trauma, there could be a hematoma component; however, the findings are still concerning for an underlying lesion which had perhaps bled.” Dr. Lin noted that a tissue biopsy may be necessary. In a report regarding a MRI scan of appellant’s knee, he found “a small joint effusion” and “a very small Baker’s cyst, which appears separate from the mass.” Dr. Lin stated his impression that appellant’s knee had a “slightly complex tear involving the posterior horn of the medial meniscus,” “probable remote Osgood-Schlatter disease” and “[s]ome mild focal tendinosis affecting the distal patellar tendon.”

Appellant submitted a duty status report dated August 11, 2009 by Dr. Phillip J. Bowman, Board-certified in psychiatry, who indicated that appellant’s left knee and calf were injured on July 28, 2009 after stubbing his toe. Dr. Bowman diagnosed him with a medial meniscus tear of his left knee and a soft tissue mass in his left calf. He advised appellant not to resume work and indicated that he was not able to perform his regular work duties.

A Report of Termination of Disability and/or Payment (Form CA-3) dated August 21, 2009 was signed by appellant’s supervisor with instructions for appellant to return to work for full duty with no restrictions. In a note dated August 21, 2009, Dr. Beauchamp indicated that appellant reported for medical treatment on that date and certified that he could return to work full time on August 21, 2009 with no restrictions.

By decision dated September 18, 2009, the Office denied appellant's claim for compensation because he did not provide sufficient medical evidence to establish that his claimed leg condition was causally related to the accepted work incident on July 28, 2009.

On October 8, 2009 appellant requested a review of the written record by an Office hearing representative and submitted additional medical evidence.

Appellant submitted a medical report dated August 20, 2009 by Dr. Beauchamp, who reported that appellant did not have a blood clot and noted a large mass in his left calf. Dr. Beauchamp evaluated an MRI scan and diagnosed appellant with "medial gastrocnemius head rupture." He indicated that it was a "[w]ork-related injury with rupture of the medial head of the gastrocs," reported that he did "not see any evidence of a mass effect" and gave his impression that it appeared to be a "post[-]traumatic lesion." Dr. Beauchamp recommended that appellant have a repeat MRI scan in four weeks. He noted that appellant could return to work without any restrictions and anticipated that there would be "significant interval resolution of [his] muscle injury."

By decision dated January 14, 2010, the Office hearing representative affirmed the September 18, 2009 decision on the grounds that appellant did not submit sufficient rationalized medical opinion evidence explaining how the claimed leg condition was related to the July 28, 2009 employment incident. The Office hearing representative found that the medical evidence did not provide a firm diagnosis that was causally related to the work injury.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing 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 injury³ was sustained in the performance of duty, as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴

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. A fact of injury determination is based on two elements. 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

² 5 U.S.C. §§ 8101-8193.

³ The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁴ *T.H.*, 59 ECAB 388 (2008). See *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁵

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.⁶

ANALYSIS

The Office has accepted that the employment incident of July 28, 2009 occurred at the time, place and in the manner alleged. The issue is whether appellant's left calf injury resulted from that incident. The Board finds that he did not meet his burden of proof to establish a causal relationship between the condition for which compensation is claimed and the July 28, 2009 employment incident.

On July 28, 2009, the date of injury, appellant was diagnosed with "leg swelling" by Dr. Mitchem-Westbrook, who did not directly address the July 28, 2009 incident and failed to provide a rationalized medical opinion as to the cause of the injury. Thus, he failed to meet his burden of proof to establish a causal relationship between the work incident and his leg condition.

In an August 3, 2009 report, Dr. Reid found a large mass on appellant's left calf, but no evidence of DVT. His medical opinion was that the mass was of "uncertain etiology" and suggested further evaluation with another MRI scan. Dr. Reid did not provide a firm diagnosis or medical rationale explaining how appellant's leg condition was caused or aggravated by the July 28, 2009 employment incident. Therefore, his report is not sufficient to establish that appellant sustained a work-related injury on July 28, 2009.

In an August 5, 2009 report, after examining an MRI scan of appellant's left leg, Dr. Lin stated that he found it "difficult to determine" whether the mass in appellant's left calf arose from the muscle or the fascial plane. He reported his concern of an "aggressive lesion, including soft tissue sarcoma, such as malignant fibrohistiocytoma" and that, "[i]f there had been some significant trauma, there could be a hematoma component." However, Dr. Lin indicated that "the findings are still concerning for an underlying lesion which had perhaps bled." He also noted that a tissue biopsy may be necessary. In another August 5, 2009 report, Dr. Lin examined an MRI scan of appellant's knee and found "a small joint effusion" and "a very small Baker's cyst, which appears separate from the mass." He gave his medical opinion that appellant's knee

⁵ *Id.* Shirley A. Temple, 48 ECAB 404 (1997); see John J. Carlone, 41 ECAB 354 (1989).

⁶ S.E., 109 LRP 29163 (2009); T.H., *supra* note 4; Gary J. Watling, 52 ECAB 278 (2001). See also J.J., 60 ECAB ____ (Docket No. 09-27, issued February 10, 2009).

had a “slightly complex tear involving the posterior horn of the medial meniscus,” “probable remote Osgood-Schlatter disease” and “[s]ome mild focal tendinosis affecting the distal patellar tendon.” Dr. Lin did not provide a firm diagnosis of appellant’s condition, did not directly address the July 28, 2009 incident and failed to offer any opinion regarding the cause of his condition. Thus, the medical evidence is of limited probative value on the issue of causal relationship and appellant failed to meet his burden of proof with the submissions of Dr. Lin’s reports.

In an August 11, 2009 duty status report, Dr. Bowman indicated that appellant’s left knee and calf were injured on July 28, 2009 after stubbing his toe. He diagnosed appellant with a medial meniscus tear of his left knee and a soft tissue mass in his left calf. 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 Although Dr. Bowman gave a firm diagnosis, he did not explain how the July 28, 2009 employment incident caused or aggravated appellant’s leg condition. Lacking thorough medical rationale on the issue of causal relationship, Dr. Bowman’s opinion is not sufficient to establish that appellant sustained an injury on July 28, 2009 while in the performance of duty.

In an August 20, 2009 report, Dr. Beauchamp indicated that appellant did not have a blood clot and reported a large mass in his left calf. He evaluated an MRI scan and diagnosed appellant with “medial gastrocnemius head rupture.” Dr. Beauchamp gave his impression that it was a “[w]ork-related injury with rupture of the medial head of the gastrocs” and stated that he did “not see any evidence of a mass effect.” He indicated that it appeared to be a “post[-]traumatic lesion” and recommended a repeat MRI scan in four weeks time. Dr. Beauchamp noted that appellant could return to work without any restrictions and anticipated that there would be “significant interval resolution of [his] muscle injury.” He failed to directly address the issue of causal relationship as he did not explain how the mechanism of the July 28, 2009 work incident caused or aggravated appellant’s leg condition. Therefore, Dr. Beauchamp’s report is not sufficient to establish that appellant sustained an employ-related injury on July 28, 2009.

Appellant contends on appeal that Dr. Beauchamp’s report establishes an employment-related injury. As the Board found above, however, Dr. Beauchamp did not provide the medical rationale to explain how and why the diagnosed condition is related to the July 28, 2009 employment incident when appellant was on his delivery route in the performance of his duties.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to the indicated employment factors, he has failed to meet his burden of proof to establish a claim.

The Board notes, however, that the issue of reimbursement of appellant’s medical expenses is not in posture for decision.

⁷ K.W., 59 ECAB 271 (2007).

This case is similar to *Val D. Wynn*.⁸ The employee experienced weakness and chest pain as a result of his employment and was transported from the employing establishment health unit to a local community hospital. The Board affirmed the denial of the employee's claim for compensation as no firm medical diagnosis had been established. The Board remanded the case to the Office for development on whether he was entitled to reimbursement of medical expenses.

In this case, the employing establishment indicated on appellant's claim form that appellant received emergency medical treatment at St. Joseph's Hospital on the same date of the alleged injury, July 28, 2009, during which time Dr. Mitchem-Westbrook, a Board-certified emergency medicine specialist diagnosed "leg swelling." There is no evidence of record that the employing establishment initiated a Form CA-16 for this purpose. The Office has failed to determine whether, under these facts, such emergency or unusual circumstances were present in a case of a doubtful nature.⁹

Although the Office adjudicated and denied appellant's claim of injury, it did not adjudicate the issue of whether he should be reimbursed for medical expenses incurred. The case will be remanded for further development of this issue.

CONCLUSION

The Board finds that appellant has not submitted sufficient rationalized medical opinion evidence to establish that the July 28, 2009 employment incident was causally related to the leg condition. Therefore, appellant failed to meet his burden of proof. The case will be returned for consideration of whether his medical expenses should be reimbursed.

⁸ 40 ECAB 666 (1989).

⁹ This procedure is set forth in the Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.3003a(3) (September 1996). The paragraph, adopting the Board's holding in *Val D. Wynn*, *supra* note 8, provides: "CA-16 [form] may be used to authorize treatment in cases of a doubtful nature and in emergencies or unusual circumstances, the Office may approve payment for medical expenses incurred even if CA-16 [form] has not been issued and the claim is subsequently denied. Payment in situations meeting these criteria must be determined on a case-by-case basis."

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2010 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: December 17, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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