

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

D.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

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**Docket No. 09-1416
Issued: January 6, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 8, 2009 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated April 16, 2009. Under 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 has established that he sustained an injury on September 9, 2008 in the performance of duty.

FACTUAL HISTORY

Appellant, a 70-year-old custodian, filed a traumatic injury claim on September 11, 2008, alleging that he injured his left knee on September 9, 2008 while descending a door step.

Appellant submitted a September 19, 2008 report from Dr. Timothy J. Myer, Board-certified in orthopedic surgery, who stated that appellant sought treatment from him for an injury which he sustained approximately two weeks previously; the injury occurred when he heard a sudden popping sensation in his left knee while stepping off a doorstep at work. Dr. Myer

related that appellant had swelling in his knee that night, which indicated he might have acute hemarthrosis. He stated that appellant had experienced continued pain since that time. Dr. Myer advised that appellant had effusion and degenerative changes in his knee which produced pain on forced extension and forced flexion. He stated that appellant had previously undergone a medial meniscectomy on the left knee. Dr. Myer asserted that x-rays taken recently indicated a stable collapse of the medial compartment compared with x-rays taken when he underwent total knee arthroplasty several years ago. He diagnosed possible internal derangement, with a possible anterior cruciate ligament (ACL) tear and scheduled appellant for a magnetic resonance imaging (MRI) scan.

Appellant also submitted reports dated September 9 and 11, 2008 from a physician's assistant.

On February 18, 2009 the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition, and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days.

In a January 30, 2009 report, Dr. Myer advised that the results of a January 23, 2009 MRI scan showed a torn ACL with known compartmental changes and a possible medial meniscus tear. He stated that appellant's cardiologist informed him that remedial surgery presented too great a risk because of his cardiac condition. Dr. Myer indicated that he would administer conservative treatment for the left knee, which included giving appellant an ACL brace to provide stability and decrease pain.

In a February 10, 2009 report, Dr. Myer noted that appellant was having continuing problems with the left knee, with progressively worsening pain. He reiterated the previously stated diagnosis of ACL tear, degenerative joint disease and possible medial meniscal tear. Dr. Myer indicated that he would consider a total joint replacement procedure. He opined that appellant was no longer capable of doing his previous work duties.

By decision dated April 16, 2009, the Office denied appellant's claim, finding that he failed to submit sufficient medical evidence in support of his claim that he sustained a left knee injury in the performance of duty on September 9, 2008.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing 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 and/or specific condition for which

¹ 5 U.S.C. § 8101-8193.

compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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.⁴ 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.⁵ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician 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 specific employment factors identified by the claimant.⁶

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.⁷

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant’s condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁸ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

The Office accepted that appellant experienced left knee pain while stepping from a doorstep on September 9, 2008. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.⁹ Appellant has not submitted rationalized, probative medical evidence to establish that the September 9, 2008

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

⁶ *Id.*

⁷ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁸ *Id.*

⁹ *John J. Carlone*, *supra* note 4.

employment incident that caused a personal injury would have been competent to cause the claimed injury.

Dr. Myer submitted reports dated September 19, 2008, January 30 and February 10, 2009 in which he stated findings on examination and indicated that appellant had a torn ACL, degenerative joint disease and a possible torn medial meniscus in his left knee. These reports, however, did not relate the diagnoses to the September 9, 2008 incident at work. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹⁰ Dr. Myer stated in his September 19, 2008 report that appellant had experienced a sudden popping sensation, followed by constant pain and swelling in his left knee, as a result of the September 9, 2008 work incident. He also noted that he showed pain on examination with forced extension and forced flexion. Dr. Myer noted that appellant had previously undergone a medial meniscectomy and advised that recently taken x-rays showed a stable collapse of the medial compartment. He had appellant undergo an MRI scan on January 23, 2009 which revealed a torn anterior cruciate ligament, degenerative joint disease and a possible medial meniscus tear. Dr. Myer stated in his January 30, 2009 report that he would attempt to provide conservative treatment. In his February 10, 2009 report, he related that appellant was experiencing progressively worsening pain in the left knee and stated that he would consider total joint replacement procedure.

Although Dr. Myer presented diagnoses of appellant's condition, he did not adequately address how these conditions were causally related to the September 9, 2008 work incident. The medical reports of record did not explain how medically appellant would have sustained a left knee injury because he stepped down from a doorstep, nor did Dr. Myer indicate how appellant's preexisting left knee condition might have been aggravated by the September 9, 2008 work incident. Appellant did not provide a rationalized, probative medical opinion relating his current condition to factors of his employment. He has not provided a medical report from a physician that explains how the work incident of September 9, 2008 caused or contributed to the claimed left knee injury.¹¹

The Office advised appellant of the evidence required to establish his claim. Appellant did not provide a medical opinion which describes or explains the medical process through which the September 9, 2008 work accident would have caused the claimed injury. Accordingly, he did not establish that he sustained a left knee injury in the performance of duty. The Office properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a left knee injury in the performance of duty.

¹⁰ See *Anna C. Leanza*, 48 ECAB 115 (1996).

¹¹ The Board notes that the reports from a physician's assistant which appellant submitted do not constitute medical evidence pursuant to section 8101(2).

ORDER

IT IS HEREBY ORDERED THAT the April 16, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: January 6, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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