United States Department of Labor
Employees' Compensation Appeals Board

W.D., Appellant	)	
and	)	**Docket No. 11-823**
	)	**Issued: October 4, 2011**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Jackson, MS, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 15, 2011 appellant filed a timely appeal from the January 25, 2011 merit decision of the Office of Workers' Compensation Programs' (OWCP) denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 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 knee injury while in the performance of duty on February 27, 2009.

FACTUAL HISTORY

On April 16, 2009 appellant, a 58-year-old medical support assistant, filed a traumatic injury claim alleging that he sustained an injury to both knees (torn lateral meniscus) in the

[1] 5 U.S.C. § 8101 *et seq.*

performance of duty on February 27, 2009 when his chair rolled out from under him as he was attempting to sit down. He stated that, while breaking the fall, his legs twisted and stretched in opposite directions.

Appellant submitted progress notes for the period December 4, 2008 through March 23, 2009 from Debra Sutton and Nikelba Bell, nurse practitioners. On March 23, 2009 Ms. Sutton noted appellant's complaints of bilateral knee pain. The record contains a report of a March 23, 2009 x-ray of the bilateral knees. A March 31, 2009 report of a magnetic resonance imaging (MRI) scan of the bilateral knees revealed suspected meniscal tears.

Appellant submitted a March 31, 2009 report from Dr. William M. Stanton, a Board-certified internist, reflecting complaints of severe pain in both knees. Dr. Stanton diagnosed bilateral knee pain, stating that appellant denied any recent injury. An addendum, signed by Ms. Bell, noted the results of an MRI scan showing a left and suspected right meniscal tear.

In an April 30, 2009 report, Dr. Lane Laken, a Board-certified orthopedic surgeon, noted a history of bilateral knee pain that started a month earlier when appellant fell at work. As appellant was rising, a chair came out from under him. When he fell to the ground, his legs went in different directions, with "some kind of twisting mechanism to his knees." Examination revealed some pain, with positive McMurray and Apley test. An MRI scan showed a suspicious medial meniscal tear on the left.

On June 20, 2009 Dr. Laken reported that appellant had experienced bilateral knee pain since he fell out of a chair at work approximately two months earlier. An MRI scan revealed a small effusion and suspicion for bilateral meniscal tears. Dr. Laken stated: "It is unclear whether these meniscal tears are a result of his fall or if they potentially were there from preexisting DJD [degenerative joint disease]."[2] On November 25, 2009 he stated, "It all started with an event where [appellant] fell on his knees here at work."[3] On January 6, 2010 Dr. Laken reviewed the results of an MRI scan, which showed a possible medial meniscal tear in the left knee and possible lateral and medical meniscal tears in the right knee. He diagnosed "likely bilateral meniscal tears."

The record contains a May 5, 2009 report from Samantha Fleming, a physical therapist, who stated that appellant injured his knees when he fell out of a chair. On May 12, 2010 Anne Newton, physical therapist, noted that he required replacement knee braces. In notes dated September 2, 2009, Ms. Fleming stated that appellant fell out of a chair at work approximately a year earlier.

In a letter dated June 23, 2010, OWCP informed appellant that the information submitted was insufficient to establish his claim and advised him to submit additional information, including a detailed account of the alleged injury and a physician's report, with a diagnosis and a rationalized opinion as to the cause of the diagnosed condition.

[2] The Board notes that the June 20, 2009 progress notes were also electronically signed by Dr. Christopher J. Kneip, a treating physician.

[3] The November 25, 2009 notes were also electronically signed by Dr. Jennifer S. Barr, a treating physician.

By decision dated August 3, 2010, OWCP denied appellant's claim. Although it accepted that the work event occurred as alleged, OWCP found that the medical evidence was insufficient to establish that appellant had a diagnosed condition that could be connected to the accepted event.

On October 27, 2010 appellant requested reconsideration.

Appellant submitted an August 17, 2010 letter from nurse practitioner Ms. Bell. The letter reflected that he was first treated for knee pain on March 23, 2009. X-rays showed degenerative changes and suspected meniscal tears. Ms. Bell stated that appellant had not complained of knee pain prior to his reported February 2009 injury. The record contains a note dated August 13, 2010, entitled "Addendum," from Dr. Kent Kirchener, a treating physician, who was identified as an "expected cosigner." The note was to the effect that the author had reviewed appellant's records and concurred with the assessment by Ms. Bell.

The record contains May 12, 2010 progress notes from Dr. Lloyd Mercer, Board-certified in emergency medicine, who stated that appellant continued to experience bilateral knee pain and diagnosed bilateral meniscal tears. Dr. Mercer indicated that appellant declined surgical intervention at that time.

By decision dated January 25, 2011, OWCP denied modification of its August 3, 2010 decision.

LEGAL PRECEDENT

FECA provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[4] 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.[5]

An employee seeking benefits under FECA 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 FECA, that the claim was timely filed within the applicable time limitation period, 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.[6] 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

[4] 5 U.S.C. § 8102(a).

[5] 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).

[6] *Robert Broome*, 55 ECAB 339 (2004).

alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[7]

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.[8] An award of compensation may not be based on appellant's belief of causal relationship.[9] 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 sufficient to establish a causal relationship.[10] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under FECA.[11]

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.[12]

ANALYSIS

OWCP accepted that appellant was a federal employee that he timely filed his claim for compensation benefits and that the February 27, 2009 workplace incident occurred as alleged. The issue, therefore, is whether he has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy his burden of proof.

In a March 31, 2009 report, Dr. Stanton noted appellant's complaints of severe pain in both knees. He diagnosed bilateral knee pain, stating that appellant denied any recent injury. Dr. Stanton did not provide a definitive diagnosis or render an opinion as to the cause of

[7] *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 FECA, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q)(ee).

[8] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

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

[10] *Id.*

[11] 20 C.F.R. § 10.303(a).

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

appellant's condition.[13] The Board has long held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[14]

Dr. Laken's reports are also insufficient to establish appellant's claim. On April 30, 2009 he related appellant's report of bilateral knee pain that started a month earlier when he fell to the ground at work and his legs went in different directions, with "some kind of twisting mechanism to his knees." Dr. Laken provided brief examination findings and discussed the results of an MRI scan, which he noted was suspicious for medial meniscal tear on the left. Absent a definitive diagnosis or an opinion as to the cause of appellant's condition, his report is of limited probative value. In his June 20, 2009 report, Dr. Laken stated that it was unclear whether the meniscal tears resulted from appellant's fall rather than from preexisting DJD. His opinion is vague and speculative and is, therefore, of diminished probative value. On November 25, 2009 Dr. Laken stated, "It all started with an event where [appellant] fell on his knees here at work." To the extent that his statement can be construed as an opinion on the cause of appellant's knee condition, he failed to explain how the condition was causally related to the February 27, 2009 fall. Medical conclusions unsupported by rationale are of little probative value.[15] In this case, such an explanation is particularly important in light of the fact that appellant failed to seek medical treatment immediately following the February 27, 2009 incident. On January 6, 2010 Dr. Laken provided a speculative diagnosis and offered no opinion as to the cause of the knee condition.

In May 12, 2010 progress notes, Dr. Mercer stated that appellant continued to experience bilateral knee pain and diagnosed bilateral meniscal tears. He indicated that appellant declined surgical intervention at that time. Dr. Mercer's report does not contain a complete factual or medical background, examination findings or an opinion regarding the cause of appellant's knee condition. Therefore, his report is of limited probative value.

The record does not contain an opinion by any qualified physician supporting appellant's contention that his knee condition was causally related to the accepted incident. While appellant has submitted chart notes and other medical documents which track his treatment, he has not provided a narrative report containing a physician's rationalized opinion on whether there is a causal relationship between his condition and the established February 27, 2009 work incident. He submitted notes and reports signed by nurses, nurse practitioners and physical therapists. As these reports were not signed by individuals that, qualify as "physicians" under FECA, the Board

[13] The Board has held that a diagnosis of pain does not constitute a basis of payment for compensation, as pain is considered to be a symptom rather than a specific diagnosis. *Robert Broom*, *supra* note 6.

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

[15] *Willa M. Frazier*, 55 ECAB 379 (2004).

finds that they do not constitute probative medical evidence.[16] Reports of x-rays, MRI scan and other diagnostic tests that do not contain an opinion on causal relationship are of limited probative.

Appellant expressed his belief that his bilateral knee condition resulted from the February 27, 2009 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.[17] 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.[18] 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.

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

Appellant may submit new evidence or argument with a written request for reconsideration to the OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a traumatic injury to his knee on February 27, 2009.

[16] 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 FECA 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 the record contains an August 13, 2010 "Addendum" to nurse Bell's August 17, 2010 letter. A notation on the addendum indicated that Dr. Kirchner was expected to cosign Ms. Bell's letter. The record does not reflect, however, that Dr. Kirchner cosigned the letter. Therefore, it has no probative value.

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

[18] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 4, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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