United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 14-295**
	)	**Issued: April 25, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Camden, NJ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 20, 2013 appellant, through his attorney, filed a timely appeal from a September 25, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 met his burden of proof to establish that he sustained an injury to the left knee causally related to factors of his federal employment.

FACTUAL HISTORY

On January 22, 2013 appellant, then a 46-year-old city carrier/transitional employee, filed a traumatic injury claim (Form CA-1) alleging that he injured his left knee on that date after stepping down with his left foot onto a step and buckling his knee. He stated that his kneecap

[1] 5 U.S.C. § 8101 *et seq.*

"popped" in and out, and that he could not fully extend his left knee.[2] The employing establishment controverted the claim and continuation of pay, checking a box confirming that appellant had been injured in the performance of duty, but also checking a box stating that the injury had been caused by appellant's willful misconduct, intoxication, or intent to injure himself or another, and that the employing establishment's knowledge of the facts of the injury agreed with the statements of appellant.[3] It explained that he must have had a preexisting condition of the knee, because otherwise he would not have known what had "popped." The employing establishment asserted that appellant did not trip, slip, or fall, and that as he was overweight, this condition could have caused his injury. It noted that he wore a brace on his right knee, but that he claimed it was for support, and that he had worked at the employing establishment for three days at the time of his injury. Comparing appellant's knees, the employing establishment stated that they appeared the same and that it did not believe that the injury came from the incident described. It stated that it believed he wore the right knee brace to help with weight bearing on that leg because he had a preexisting injury of the left knee, and that he had asked to be taken to a specific hospital by ambulance because they knew him well there. Appellant's supervisor noted that he had stopped work on January 22, 2013.

On January 30, 2013 OWCP notified appellant of the deficiencies of his claim. It afforded him 30 days for the submission of additional medical and factual evidence.

In discharge instructions dated January 22, 2013, Dr. Rick Hong, Board-certified in emergency medicine, diagnosed appellant with knee pain and prescribed crutches.

In an emergency department visit summary dated January 22, 2013, Dr. Hong recommended differential diagnoses of patellar dislocation versus sprain versus a ligamentous tear. He noted that appellant's injury occurred at work as a mail carrier. Dr. Hong recommended an x-ray, pain management, an immobilizer, occupational health for a work-related injury and an orthotic referral.

On January 22, 2013 Dr. Thomas J. Presenza, a Board-certified radiologist, examined the results of four views of appellant's left knee taken on that day. He noted no acute osseous abnormality and mild tricompartmental arthritis. Dr. Presenza further noted a narrowing of the lateral facet of the patellofemoral joint, with very mild lateral translation of the patella relative to the trochlear groove. He noted enthesopathic changes at the superior patella, an osseous protuberance from the dorsal aspect of the distal femoral metaphysis, ossific densities within the soft tissues anterior to the distal femur and superior to the patella and no joint effusion.

[2] The record contains two CA-1 forms with conflicting information regarding the time of appellant's injury. A handwritten form states that the injury occurred at 11:58 a.m., while a typed form states that it occurred at 12:50 p.m. The forms also contain conflicting information regarding appellant's regular work hours, with the typed form stating that he worked 9:00 a.m. through 4:00 a.m., and the handwritten form stating that he worked from 8:00 a.m. through 4:30 p.m.

[3] On the handwritten form, the supervisor did not check a box indicating whether appellant was injured within the performance of duty, but noted that it was unknown and that the employing establishment did not believe he was. It also stated that it was unknown whether appellant's injury had been caused by willful misconduct, intoxication, or intent to injure himself or others.

In a statement dated January 22, 2013, appellant noted that on that date at 11:58 a.m., he delivered mail and proceeded to leave the residence. As he started to descend the stairs to the residence, he stepped with his left foot and his left knee buckled. Appellant's knee "popped" out and back in and he was not able to straighten his left leg. Immediately afterward, he contacted his supervisor.

In a record of an investigative interview dated January 24, 2013, the employing establishment questioned appellant about the traumatic incident, his prior safety training and his claimed injury. Appellant stated that his injury occurred on his fourth delivery route, and that he had received information about using railings when walking up steps. He stated that the stairs on which the injury occurred had no railings, but that he went up carefully and used only the clear area of the steps. Appellant noted that there was snow and leaves on the outside of the steps, but that he avoided them and that he injured himself on the first step downward. He acknowledged that he asked to be taken to Cooper Hospital by the ambulance driver, and he explained his preference to his supervisor as resulting from his wife's familiarity with the hospital due to her disability. Appellant stated that he placed his left leg on the step to proceed downward, felt a "pop," and saw his kneecap "pop" out and back in, but that he did not trip, slip or fall. The supervisor asked how he knew it was his kneecap, to which appellant replied that he "just did," and that it had not occurred before. She also asked why he had a brace on his right knee, to which he replied "just for support," and upon being asked what the support was for, he stated "I just wanted to be sure I would not get hurt so I wore it for support." On being asked why he did not wear a brace on his left knee for support as well, appellant stated "I don't know." He noted that he wore other braces on his back and ankle, and that he had previously worked at United Parcel Service of North America, Inc. (UPS) in the 1990s. On being asked whether he claimed an on-the-job injury at UPS, appellant stated that he had claimed an injury of a torn rotator cuff. The supervisor noted that appellant had called from the hospital to report a torn patella, and asked why he reported this injury when the medical paperwork stated only that he had knee swelling. Appellant stated that he had asked the physicians more than once to write that down as the diagnosis, and explained that some of the physicians had reported that diagnosis to him. He further asked the physicians to perform a magnetic resonance imaging (MRI) scan, but stated that they refused. The supervisor noted that appellant had told her at the hospital that he got advice from another letter carrier, and asked what type of help he had provided. Appellant replied that he told him how to be safe and "a lot of ins and outs of the Post Office." She asked him whether he thought his weight could have been a factor in this injury, and appellant replied that he did not know. On being asked whether he would have to put one leg down first in descending stairs and thus put all of his weight on that leg, he replied "I guess." Appellant stated that he had not had problems or been treated for knee problems before this incident, and that he bought and wore the brace on his right knee not because the knee hurt or bothered him, but for support.

On January 25, 2013 an investigative supervisor further explained the employing establishment's reasons for controversion of appellant's claim. She stated that, on January 22, 2013, she instructed appellant, a new transitional employee, to deliver a three and one-half hour route. Appellant had been given instruction on how to get to the route and he acknowledged that he had been given driving and safety training. The supervisor stated that this delivery route was his third time on the street for delivery. At approximately 12:30 p.m., she received a telephone call from appellant stating that he had been injured and an ambulance was called. Appellant

stated that he wanted to go to Cooper Hospital, as they knew him well there. The supervisor went to the hospital to see him. The physician at the hospital asked appellant to pull up the pant leg of his right uninjured leg for comparison with the left leg, which revealed a right knee brace. The physician asked whether he had any problems with his knees prior to this date, to which appellant replied that he had not.

In a patient referral slip dated January 28, 2013, Dr. Terry O'Neal-Cox, an internist, referred appellant for an MRI scan to rule out internal derangement and diagnosed him with a left knee/leg sprain.

On January 28, 2013 Dr. O'Neal-Cox stated that appellant was injured on January 22, 2013 by descending a step when his left knee slid in and out of place. He assessed appellant with a knee derangement of the lateral cartilage and knee/leg sprain, and ordered an MRI scan of appellant's knee. In a duty status report of the same date, Dr. O'Neal-Cox diagnosed appellant with a left knee sprain with internal derangement and recommended that he not work. Dr. O'Neal-Cox stated that his diagnosis was due to an injury on this form report, but did not list a date of injury or how the injury occurred.

On January 31, 2013 the employing establishment sent an addendum to its controversion letter regarding appellant's request for authorization of an MRI scan. It noted that it had not yet received any medical reports recommending that appellant have an MRI scan performed on his knee or diagnosing him with a condition other than knee sprain.

On February 4, 2013 Dr. Neil Roach, a Board-certified radiologist, reviewed an MRI scan of appellant's knee. He noted that he had no previous imaging of the knee for comparison. Dr. Roach diagnosed appellant with a complete tear of the quadriceps tendon from the superior pole of the patella, with a partial tear of the medial retinaculum in the vicinity of the superior pole of the patella, as well as extensive subcutaneous edema and prepatella bursitis.

In progress notes dated February 5, 2013, Dr. O'Neal-Cox stated that appellant had told him that he used a flight of steps on January 22, 2013 when his kneecap "popped" out. He diagnosed appellant with a knee/leg sprain and a complete quadriceps tendon tear. Dr. O'Neal-Cox noted pain on palpation of the superior patellar ligament and reduced range of motion.

In a work status report dated February 5, 2013, Dr. Todd M. Lipschultz, a Board-certified orthopedist, recommended that appellant be off work. He reported a diagnosis of a complete left quadriceps tendon tear.

In a letter to Dr. O'Neal-Cox dated February 5, 2013, Dr. Lipschultz diagnosed appellant with a complete tear of the quadriceps tendon and stated that he needed surgery to correct it. He noted that the injury occurred when appellant walked down steps and his left knee gave way. In a letter dated February 14, 2013, Dr. Lipschultz expressed that appellant had a left distal quadriceps tendon rupture that required urgent surgical repair.

On February 18, 2013 appellant responded to OWCP's inquiries. He stated that on January 22, 2013 he had finished delivering mail to a residence and turned to descend the steps. When appellant placed his left foot down on the first step, he saw his kneecap "pop" out and

back in, and began to have intense pain and swelling above his left knee. He was able to maneuver to the bottom of the steps to sit and immediately called the employing establishment to report the injury. An ambulance was contacted and he was taken to Cooper Hospital 20 minutes later. Appellant clarified that he was on his regular shift delivering mail to residences when the injury occurred, and stated that he had not had any similar conditions of the knee before January 22, 2013. He noted that January 22, 2013 was his fourth day working by himself, and that his first day of work was January 2, 2013 for 20 hours of training. Appellant stated that he had previously worked inside contacting vendors and corporate employees, and that in that position he wore a brace only at work to prevent issues due to walking. He noted that he had lost weight after being diagnosed with diabetes in 2010 and that it was imperative that he manage his health. Appellant stated that Cooper Hospital was both the closest hospital to the scene of the injury and it contained his medical records, which was why he requested to be taken to that specific hospital. As to how he claimed to recognize that his kneecap "popped" out, he stated that he had seen it occur. Appellant explained that after his supervisor left him at the hospital, a physician told him there was a possible tendon tear and recommended that he see an orthopedist. He noted that he could not get an appointment with an orthopedist at first because he did not know his claim number. Appellant went to an orthopedist on January 28, 2013. He received an information packet on January 29, 2013 and his claim number on February 1, 2013 *via* voicemail. On February 11, 2013 he stated that Dr. Lipschultz contacted him to tell him that his surgery was on hold while his claim was under review.

By decision dated March 4, 2013, OWCP denied appellant's claim. It found that the medical evidence was insufficient to establish a causal relationship between his left knee condition and the January 22, 2013 employment incident. OWCP accepted that he was a federal civilian employee who filed a timely claim; that the traumatic incident occurred; that a medical condition was diagnosed; and that he was within the performance of duty at the time of the incident.

On March 11, 2013 appellant, through his attorney, requested a telephonic hearing before an OWCP hearing representative.

In a report dated March 28, 2013, Dr. Andrew Beaver, an orthopedic surgeon, stated that appellant stumbled at work two months prior to his visit. On physical examination, he noted a palpable defect of the superior pole of the patella. Dr. Beaver stated that an MRI scan revealed a full thickness quadriceps tendon tear of the left knee and recommended surgery.

In an operative report dated April 5, 2013, Dr. Beaver described the procedure of repairing appellant's left knee quadriceps tendon. He noted that appellant fell on his flexed left lower extremity four or five weeks before the procedure.

A hearing was held before an OWCP hearing representative on July 12, 2013. Appellant stated that he did not have a history of injury to either his left or right knee, and that he wore a right knee brace because he was not used to the walking required by his position. He explained that his right knee had been getting sore from kneeling and that he used the brace as a cushion. Appellant noted that he had not been physically examined by the employing establishment prior to his hiring. He described the traumatic event of January 22, 2013, noting that he had not fallen to the ground at the time of the incident, but was able to sit down on the side of the steps.

Appellant stated that his physicians had told him that by placing the left foot down on the first step when descending, there was pressure that caused his tendon to rupture. He noted that he had not yet been released to return to work. Appellant stated that he had been released from his position as a city carrier/transitional employee on February 5, 2013 because he had not completed the 90-day probationary period. The hearing representative informed appellant that he would hold the record open for 30 days for the submission of new evidence.

In discharge notes dated April 6, 2013, Dr. Beaver stated that appellant sustained a chronic left quadriceps tear in January 2013. He noted that appellant was medically and orthopedically stable for discharge.

On April 11, 2013 Dr. Beaver stated that appellant was doing well after his surgery and was wearing a locked knee brace along with crutches. On May 23, 2013 Dr. Beaver noted that appellant was doing well and had spent six weeks in a hinged knee brace locked in extension. He recommended that appellant start physical therapy for six weeks and that he would be out of work for that period of time, and stated that appellant could not perform a straight leg raise. On July 22, 2013 Dr. Beaver stated that appellant could return to work. On examination of the left knee, he found full range of motion, good quadriceps strength and tone and noted that appellant could perform a straight leg raise. He recommended that appellant stay in physical therapy.

By decision dated September 25, 2013, OWCP's hearing representative affirmed the March 4, 2013 decision. He found that appellant had not submitted rationalized medical opinion evidence supporting a causal relationship between his diagnosis and the traumatic event of January 22, 2013.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 FECA; 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 claimed are causally related to the employment injury.[5] 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.[6]

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.[7] 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.[8] Second, the

[4] 5 U.S.C. § 8101 *et seq.*

[5] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364, 366 (2006).

[6] *S.P.*, 59 ECAB 184, 188 (2007); *Joe D. Cameron*, 41 ECAB 153, 157 (1989).

[7] *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 5.

[8] *D.B.*, 58 ECAB 464, 466 (2007); *David Apgar*, 57 ECAB 137, 140 (2005).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[9]

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.[10] An award of compensation may not be based on appellant's belief of causal relationship. 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.[11]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[12] 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 compensable employment factors.[13] 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.[14]

ANALYSIS

OWCP accepted that the employment incident of January 22, 2013 occurred, that a medical condition had been diagnosed and that he was within the performance of duty at the time of the incident. The issue is whether appellant's left knee condition resulted from the January 22, 2013 employment incident. The Board finds that he did not meet his burden of proof to establish a causal relationship between the knee condition for which compensation is claimed and the employment incident.

The medical evidence submitted contains a number of reports in which appellant's physicians gave diagnoses, examination findings and affirmative statements regarding appellant's description of the mechanism of injury. On January 22, 2013 Dr. Hong noted that appellant's injury occurred at work as a mail carrier. On January 28, 2013 Dr. O'Neal-Cox stated that appellant was injured on January 22, 2013 by descending a step when his left knee slid in and out of place. In progress notes dated February 5, 2013, he stated that appellant had

[9] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734, 737 (2008); *Bonnie A. Contreras*, *supra* note 5.

[10] *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[11] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[12] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

[13] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

[14] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

told him that he used a flight of steps on January 22, 2013 when his kneecap "popped" out. In a letter dated February 5, 2013, Dr. Lipschultz noted that the injury occurred when appellant walked down steps and his left knee gave way. In a report dated March 28, 2013, Dr. Beaver stated that appellant stumbled at work two months prior to his visit. In an operative report dated April 5, 2013, Dr. Beaver noted that appellant fell on his flexed left lower extremity four or five weeks before the procedure. In discharge notes dated April 5, 2013, he stated that appellant sustained a chronic left quadriceps tear in January 2013. While these reports contain affirmative statements of causation and history of injury from appellant's physicians, they do not contain a sufficient explanation of the process through which the January 22, 2013 incident physiologically caused or aggravated appellant's claimed left knee condition. Medical conclusions unsupported by rationale are of little probative value.[15] Furthermore, Dr. Beaver's March 28, 2013 report and April 5, 2013 operative report contain incorrect dates and mechanisms of injury. Medical conclusions based on inaccurate or incomplete factual or medical histories are of limited probative value.[16] Thus, these reports are not sufficient to meet appellant's burden of proof to establish causal relationship.

Appellant also submitted reports from his physicians containing diagnoses and findings on examination, but lacking any opinions on causal relationship. Dr. Beaver's postoperative progress reports from April 11 through July 22, 2013 are of this variety, as are the reports of January 22, 2013 from Drs. Hong and Presenza, and the February 4, 2013 report of Dr. Roach. 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.[17] For this reason, these reports are insufficient to establish appellant's claim.

Appellant expressed his belief that his left knee condition resulted from the January 22, 2013 employment incident. The Board has held that the fact that a condition manifests itself or worsens during a period of employment[18] or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between a claimed condition and employment factors.[19] 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.[20] Causal relationship must be substantiated by rationalized medical opinion evidence, which it is appellant's responsibility to submit. Therefore, his belief that his condition was caused by the work-related incident is not determinative.

The hearing representative advised appellant that it was his responsibility to provide a physician's well-reasoned medical opinion on the cause of his condition. Appellant failed to

[15] *Willa M. Frazier*, 55 ECAB 379, 384 (2004).

[16] *See M.W.*, 57 ECAB 710 (2006).

[17] *Michael E. Smith*, 50 ECAB 313, 316 n.8 (1999).

[18] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[19] *B.B.*, Docket No. 13-256 (issued August 13, 2013); *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

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

submit appropriate medical documentation in response. As there is no probative, rationalized medical evidence addressing how his claimed left knee condition was caused or aggravated by his employment, he 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.

Appellant may submit new evidence or argument with a written request for reconsideration to 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. To establish causation, the evidence of record should reflect a correct history and offer a medically sound explanation by the physician of how the traumatic event of January 22, 2013, in particular, physiologically caused or aggravated his left knee condition.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish a traumatic injury in the performance of duty on January 22, 2013.

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 25, 2014
Washington, DC

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

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

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