U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM F. MITCHELL and U.S. POSTAL SERVICE,
PINEHAVEN POST OFFICE, Charleston Heights, S.C.

Docket No. 96-1440; Submitted on the Record;
Issued April 7, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty.

On September 16, 1993 appellant, then a 52-year-old letter carrier, filed a notice of traumatic injury, claiming that he slipped and fell on both knees while delivering mail in the rain. The employing establishment controverted the claim on the grounds that appellant had sought no medical treatment for any knee injury until December 21, 1993 and did not miss any time from work.

In support of his claim, appellant submitted a clinical note, an x-ray report dated December 21, 1993 which showed no significant pathology, two disability certificates signed by Dr. Dennis J. Fisher, a general practitioner, two duty status reports diagnosing patellofemoral contusions and indicating disability through January 10, 1994 and a January 13, 1994 medical report from Dr. Bright McConnell, III, a Board-certified orthopedic surgeon.

Dr. McConnell reported that appellant had fallen "into a flexed position on concrete steps" on September 16, 1993 and had minimal discomfort at the time. However, the pain had been significantly exacerbated over the past two to three weeks, particularly when climbing or descending steps. Dr. McConnell diagnosed post-traumatic bilateral patellofemoral syndrome, right knee greater than the left and recommended physical therapy.

On February 16, 1994 the Office of Workers' Compensation Programs informed appellant that the evidence he had submitted in support of his claim was insufficient and that he needed to provide a rationalized medical opinion showing the causal relationship between the alleged work injury and the condition for which he was being treated.

On February 14, 1994 Dr. McConnell completed a duty status form indicating that appellant could work eight hours a day with restrictions on walking, standing, climbing and

lifting. Treatment notes from Dr. McConnell stated that appellant's patellar tendinitis was exacerbated by stepping in and out of his mail truck, but he had no demonstrable effusion or instability upon physical examination.

On April 18, 1994 the Office denied the claim on the grounds that the evidence was insufficient to establish that appellant had sustained any injury. The Office noted that none of the medical reports contained an opinion on whether the condition being treated was caused by the September 16, 1993 incident.

Appellant timely requested reconsideration and submitted a May 30, 1994 report from Dr. McConnell who diagnosed a patellofemoral contusion and released appellant to work with permanent restrictions. Dr. McConnell stated that appellant probably had reached maximum medical improvement and was able to deliver the mail on his route for four hours a day. Dr. McConnell added that appellant would not have any permanent impairment of his lower extremities. On July 5, 1994 the Office denied appellant's request on the grounds that the evidence was insufficient to warrant modification of the prior decision.

Appellant again requested reconsideration and submitted physical therapy notes and a June 26, 1995 form report in which Dr. McConnell diagnosed patella tendinitis and released appellant for light duty, with no climbing, stooping, or standing. On August 8, 1995 the Office denied reconsideration on the same grounds, noting that a physical therapist was not a physician[1] and that the form reports provided no opinion on whether appellant's current condition was related to the initial injury.

Appellant sought reconsideration a third time and submitted office notes dated June 26 and July 24, 1995. The earlier note indicated that appellant was seen for recurrent problems with both knees, the right greater than the left and had been seen last year for chronic patellar tendinitis which occurred after a fall onto both knees. The July 24, 1995 note related that Dr. McConnell did not "think there was any question" that appellant's prior fall and "residual patellofemoral problems [are] a direct cause of the reaggravation of his current symptoms."

On September 13, 1995 the Office denied reconsideration on the grounds that these reports were insufficient to warrant modification of its prior decision. The Office noted that Dr. McConnell provided no medical rationale to explain how the September 1993 fall caused residual problems when appellant sought no medical treatment for three months.

Appellant requested reconsideration again and submitted a September 25, 1995 report from Dr. McConnell who noted that appellant was denied coverage because he "apparently reported" his injury after the fact and waited three months to seek orthopedic evaluation. The

[1] Section 8101(2) of the Federal Employees' Compensation Act provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Only medical evidence from a physician as defined by the Act will be accorded probative value. Health care providers such as nurses, acupuncturists, physician's assistants and physical therapists are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value. *Jane A. White*, 34 ECAB 515, 518 (1983).

physician stated that he believed that appellant's patellar tendinitis was a direct result of the fall sustained in September 1993 and that he had permanent restrictions and an eight percent residual impairment of his lower extremities, based upon his patellar tendinitis. On November 8, 1995 the Office denied reconsideration on the grounds that Dr. McConnell's latest report was insufficient to warrant modification of its prior decision.

Appellant sought reconsideration a fourth time and submitted a November 7, 1995 report from Dr. McConnell, who attempted to explain his opinion. He noted that appellant was seen for injury to his knees which occurred after a fall and that the Office questioned why appellant had prolonged seeking medical attention.

Dr. McConnell stated that appellant's injury was subsequently found to be a post-traumatic patellofemoral tendinitis most probably secondary to a fall on a flexed knee. He concluded:

> "Quite frequently the symptoms are not acute at the initial time of the trauma or the patient will suspect that [the problem] will improve over a period of time. It is not uncommon that the patient may wait several months before seeking medical attention because of failure to improve."

Dr. McConnell added that if the Office had any questions about the possibility of a prior existing trauma or condition affecting appellant's diagnosis or treatment, it should contact him directly.

On January 16, 1996 the Office again denied reconsideration on the grounds that the medical evidence was insufficient to warrant modification. The Office noted that Dr. McConnell's report failed to establish a causal relationship between the September 1993 injury and the condition for which appellant was being treated or to bridge the gap between the date of the alleged injury and December 21, 1993, when medical treatment was first sought.

The Board finds that this case is not in posture for decision and must be remanded for further development of the medical evidence.

An employee seeking benefits under the Act[2] 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 filed within the applicable time limitation of the Act, 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.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[4]

[2] 5 U.S.C. §§ 8101-8193.

[3] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[4] *Id.*

In a claim for compensation based on a traumatic injury, the employee must establish fact of injury by submitting proof that he or she actually experienced the employment accident or event in the performance of duty and that such accident or event caused an injury as defined in the Act and its regulations.[5] The Office's regulations define traumatic injury as a wound or other condition of the body 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.[6] The injury must be caused by a specific event or incident or series of events of incidents within a single workday or shift.[7]

In determining whether an employee sustained an injury in the performance of his duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components considered in conjunction with one another.[8] The first component to be established is that the employee actually experienced the employment incident at the time, place and in the manner alleged. In this case, the Office found that the claimed incident occurred at the time, place and in the manner alleged. The second component, whether the employment incident caused a personal injury, generally must be established by medical evidence.[9]

The medical evidence required is generally rationalized medical opinion evidence which includes a physician's opinion of reasonable medical certainty based on a complete factual and medical background of the claimant and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[10] Neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that his condition was caused by his employment is sufficient to establish a causal relationship.[11]

In this case, the Office initially denied appellant's claim because he failed to seek medical treatment until three months after the September 16, 1993 fall. Yet on the day of the fall he reported the incident to his supervisor and filed a CA-1 form. On December 21, 1993 he reported to the physician treating him that he had fallen on both knees at work but did not notice pain and swelling until December 18, 1993. Appellant also told both Dr. Fisher and Dr. McConnell that he fell on both knees while it was raining and the ground was wet.

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[5] *Gene A. McCracken*, 46 ECAB 593, 596 (1995).

[6] 20 C.F.R. § 10.5(15).

[7] *Richard D. Wray*, 45 ECAB 758, 762 (1994).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995); *see Elaine Pendleton*, 40 ECAB 1143, 1147 (1989).

[9] *John J. Carlone*, 41 ECAB 354, 357 (1989).

[10] *Ern Reynolds*, 45 ECAB 690, 695 (1994).

[11] *Lourdes Harris*, 45 ECAB 545, 547 (1994).

In his January 13, 1994 report, Dr. McConnell stated that appellant fell "into a flexed position on concrete steps" and had had minimal discomfort at the time but had reported progressive pain off and on which had significantly worsened over the past two to three weeks. In his November 7, 1995 report, Dr. McConnell stated that appellant's tendinitis was related to a fall on flexed knees and explained that the symptoms are not always acute at the time of the initial trauma and that the patient may delay seeking treatment in the belief that the pain would go away.

The Board has long held that proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter.[12] While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[13] The Office's procedures provide that, while an employee claiming compensation must show sufficient cause for the Office to proceed with processing and adjudicating a claim, the Office has the obligation to aid in this process by giving detailed instructions for developing the required evidence.[14]

In this case, the Board finds that Dr. McConnell has offered an adequate explanation for appellant's delay in seeking treatment.[15] Thus, the three-month delay itself does not constitute a basis for denying this claim.[16] Further, the record contains no inconsistencies in appellant's statements or activities indicating that an intervening nonwork-related incident caused the diagnosed condition.

Although Dr. McConnell stated that the diagnosed patellofemoral tendinitis resulted from the September 1993 fall, he offered no specific medical rationale explaining why he reached that conclusion in appellant's case.[17] Therefore, his report is insufficient to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that his disability was causally related to the September 16, 1993 employment injury. Nonetheless, Dr. McConnell's opinion is not refuted by other medical evidence of record and constitutes sufficient evidence in support of appellant's claim to require further development of the record by the Office.[18]

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[12] *Richard Kendall*, 43 ECAB 790, 799 (1992) and cases cites therein.

[13] *Leon C. Collier*, 37 ECAB 378, 379 (1986).

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3(a) (April 1993).

[15] *See Willie J. Clements*, 45 ECAB 244, 248 (1994) (finding that the lack of a contemporaneous medical report of specific injury does not negate fact of injury).

[16] *Cf. George W. Glavis*, 5 ECAB 363, 365 (1952) (finding that appellant's explanation of a six-week delay in seeking medical treatment for an alleged injury was not corroborated by his supervisor or co-workers).

[17] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

[18] *See Mark A. Cacchione*, 46 ECAB 148, 153 (1994) (finding that medical reports, while insufficiently rationalized, provided enough support for appellant so as to require the Office to develop the medical evidence further): *see also Rebel L. Cantrell*, 44 ECAB 660, 666 (1993) (finding that only in rare instances where the

On remand, the Office should send appellant, along with a statement of accepted facts and the entire case record, to an appropriate Board specialist for a rationalized medical opinion on whether appellant has any disability causally related to the September 16, 1993 fall at work. After such further development as the of deems necessary, a *de novo* merit decision should be issued.[19]

The January 16, 1996, November 8 and September 13, 1995 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.
April 7, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

evidence indicates that no additional information could possibly overcome one or more defects in the claim is it proper for the Office to deny a case without further development).

[19] *See John J. Carlone*, 41 ECAB 354, 358 (1989) (finding that the medical evidence submitted by appellant is sufficient, absent any contrary medical opinion, to require further development of the record); *see generally Horace Langhorne*, 29 ECAB 820 (1978).