

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID D. DORRES and U.S. POSTAL SERVICE,  
POST OFFICE, La Grande, Oreg.

*Docket No. 97-1370; Submitted on the Record;  
Issued December 29, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT:

The issues are: (1) whether appellant sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's November 4, 1996 request for reconsideration.

On July 17, 1996 appellant, then a 46-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he sustained an injury to his right knee as a result of his employment. Appellant did not stop work. Appellant characterized his illness as a painful and swollen right knee and explained that he first became aware of this condition on June 17, 1996. Appellant further explained that he believed his illness resulted from his daily job activities, which included twisting, turning, and pivoting, walking over varied terrain and climbing in and out of his vehicle approximately one hundred times per day. Dr. Donald O. Warren, M.D., Board-certified in orthopedic surgery, initially examined appellant on July 19, 1996 and diagnosed a right knee effusion with mild anterolateral and mild anteromedial joint line tenderness.

By letter dated August 27, 1996, the Office advised appellant that the information previously submitted was insufficient to render a determination of whether he was eligible for benefits. The Office further advised appellant of the type of factual and medical evidence necessary to establish his eligibility and requested that he submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion specifically addressing the factors or incidents in his federal employment that contributed to his claimed condition. In response, appellant provided a brief description of his nonemployment-related activities and hobbies. The Office also received a copy of Dr. Warren's treatment notes covering the period of July 19 through August 27, 1996.<sup>1</sup>

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<sup>1</sup> While the doctor's treatment notes include a diagnosis of right knee effusion, Dr. Warren did not specifically relate this condition to appellant's employment

On September 25, 1996 the Office wrote to Dr. Warren inquiring as to whether he believed appellant's work activities caused, or significantly contributed to, his right knee condition.<sup>2</sup> The Office asked Dr. Warren to explain his opinion on causal relationship. Additionally, the Office authorized a magnetic resonance imaging (MRI) scan to assist Dr. Warren in his diagnosis. Appellant was administered an MRI on October 1, 1996 and in a letter dated October 4, 1996, Dr. Warren reviewed the results of the MRI and expressed the opinion that appellant's work activities significantly contributed to his right knee condition.<sup>3</sup>

By decision dated October 16, 1996, the Office denied appellant's claim on the basis that the evidence failed to establish that the claimed condition was causally related to his employment. In an accompanying memorandum, the Office explained that Dr. Warren's treatment notes, as well as his October 4, 1996 report, did not adequately address how appellant's specific work activities caused or aggravated his right knee condition.

Appellant filed a timely request for reconsideration on November 4, 1996. In support of his request for reconsideration, appellant submitted a narrative statement regarding his work activities and resubmitted Dr. Warren's October 4, 1996 report. Appellant also submitted Dr. Warren's October 4, 1996 treatment notes and a copy of the October 1, 1996 MRI report, the findings of which Dr. Warren had incorporated in his October 4, 1996 report. On February 6, 1997 the Office issued a decision denying appellant's request for reconsideration, noting, *inter alia*, that the evidence submitted in support of the request for review was of a repetitious nature and, therefore, insufficient to warrant reconsideration of the Office's October 16, 1996 decision, denying compensation. Appellant subsequently filed an appeal with the Board on February 25, 1997.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>4</sup> 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 under the Act, that an injury was sustained in the performance of duty and that any disability or specific condition, for which compensation is being claimed is causally related to the employment injury.<sup>5</sup> 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.<sup>6</sup>

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<sup>2</sup> The Board notes that "significant" contribution is not a requirement for compensability; see *Henry Klaus*, 9 ECAB 333 (1957). The Office's error, however, is harmless since its denial of the claim does not turn on whether appellant's work was a "significant" contributor to his condition.

<sup>3</sup> Dr. Warren diagnosed chronic effusion of the right knee with "probable" early degenerative arthritis.

<sup>4</sup> 5.U.S.C. § 8101 *et seq.*

<sup>5</sup> *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

In an occupational disease claim, in order to establish that an injury was sustained in the performance of duty, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition, for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by appellant were the proximate cause of the condition, for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>7</sup>

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 his condition was caused, precipitated or aggravated by his employment is sufficient to establish a causal relationship.<sup>8</sup> Causal relationship must be established by rationalized medical opinion 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 physician's opinion must be based on a complete factual and medical background of the claimant, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the claimant's specific employment factors.<sup>9</sup>

While Dr. Warren's October 4, 1996 report, concludes that appellant's work activities of walking and climbing in and out of his vehicle have significantly contributed to appellant's right knee condition, he did not provide a detailed explanation of the basis for his opinion. In its September 25, 1996 letter, the Office specifically asked Dr. Warren to "explain how specific work activities caused [appellant's] injury." A conclusion without adequate foundation or explanation does not rise to the level of rationalized medical opinion evidence.<sup>10</sup> Moreover, Dr. Warren's October 4, 1996 report, is speculative and, therefore, has limited probative value.<sup>11</sup> First, Dr. Warren diagnosed chronic effusion of the right knee with "*probable*" early degenerative arthritis of the knee. Second, when commenting about appellant's October 1, 1996 MRI results,<sup>12</sup> Dr. Warren stated "I *suspect* the same process which is causing the effusion is *likely* to be causing some irritation or swelling in the area of the anterior cruciate ligament to cause the MRI scan to have this appearance." (Emphasis added.) Finally, Dr. Warren did not

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>11</sup> *Arthur P. Vliet*, 31 ECAB 366 (1979).

<sup>12</sup> While noting that appellant's MRI was interpreted as revealing "Findings ... consistent with [anterior cruciate ligament] strain without complete rupture," Dr. Warren commented that appellant did not have a history which would necessarily result in an anterior cruciate ligament (ACL) strain.

identify the “process” he alluded to as the cause of the effusion.<sup>13</sup> As previously noted, a physician’s opinion must be expressed in terms of a reasonable degree of medical certainty. Inasmuch as appellant failed to submit rationalized medical opinion evidence on the issue of whether there is a causal relationship between his diagnosed condition and the implicated employment factors, the Office properly denied appellant’s claim for compensation.

The Board further finds that the Office properly exercised its discretion in denying appellant’s November 4, 1996 request for reconsideration.

As previously noted, the evidence submitted in support of appellant’s request for reconsideration consisted of a narrative statement regarding appellant’s work activities and Dr. Warren’s previously submitted October 4, 1996 report. Appellant also submitted Dr. Warren’s October 4, 1996 treatment notes and a copy of the October 1, 1996 MRI report.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>14</sup> Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.138(b)(1), the Office will deny the application for review without reaching the merits of the claim.<sup>15</sup>

In its February 6, 1997 decision, the Office correctly noted that appellant neither provided any information concerning an error by the Office, nor did he raise a new point of law not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.138(b)(1). With respect to the third requirement; submitting relevant and pertinent evidence not previously considered, the Office correctly noted that Dr. Warren’s October 4, 1996 report had previously been considered. Regarding the doctor’s October 4, 1996 treatment notes, although not previously a part of the record, these notes essentially mirror the findings in his October 4, 1996 report and do not include a specific opinion on causal relationship. Similarly, the pertinent aspects of the October 1, 1996 MRI report were incorporated in Dr. Warren’s previously considered October 4, 1996 report and in any event, this report does not address the cause of appellant’s condition. Lastly, the facts regarding appellant’s work activities were not at issue, therefore, appellant’s narrative statement about his work activities is irrelevant. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does

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<sup>13</sup> Dr. Warren’s earlier treatment notes provide no more insight into the cause of appellant’s right knee condition than does his October 4, 1996 report.

<sup>14</sup> 20 C.F.R. § 10.138(b)(1).

<sup>15</sup> 20 C.F.R. § 10.138(b)(2).

not constitute a basis for reopening the case.<sup>16</sup> Therefore, appellant is also not entitled to a review of the merits of his claim based on the third requirement under section 10.138(b)(1).

Inasmuch as appellant's November 4, 1996 request for reconsideration does not satisfy any one of the three requirements set forth for obtaining a merit review of his claim, the Board finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated February 6, 1997 and October 16, 1996 are, hereby, affirmed.

Dated, Washington, D.C.  
December 29, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>16</sup> *Sandra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).