U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY L. MARROW and DEPARTMENT OF THE NAVY, DEFENSE PRINTING SERVICE, Arlington, Va.

Docket No. 97-825; Submitted on the Record;
Issued November 18, 1998

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty on May 18, 1996.

On June 24, 1996 appellant, then a 46-year-old maintenance worker, filed a notice of traumatic injury and claim for continuation of pay/compensation alleging that at work on May 18, 1996 he was walking down the hallway when his right knee gave out. Appellant was off work from June 25 to July 1, 1996.

In a duty status report (Form Ca-17), the employing establishment noted that "after working all day moving equipment for disposal and near the end of his shift, appellant was returning from the restroom on the employee's hallway when he had a sharp pain in the right knee." The reverse side of the form was prepared by Dr. Andre Eglevsky, a Board-certified orthopedic surgeon, on June 12, 1998. The doctor diagnosed torn medial meniscus of the right knee for which he recommended surgery. He noted that appellant was able to return to full-time employment.

A June 25, 1996 operative note from Dr. Eglevsky described the surgical procedure and included a diagnosis of torn medial meniscus of the right knee.

By letter dated August 6, 1986, the Office of Worker's Compensation Programs advised appellant that in order to receive further consideration of his claim he must submit a personal statement of the activities he was performing prior to his knee collapsing. The Office further advised appellant that he must submit a rationalized medical opinion as to how a torn medical meniscus could be related to his federal employment.

By letter dated August 20, 1996, appellant provided a detailed description of his job as a "printing equipment repairer." Appellant explained that on May 18, 1996 he was lifting and moving pieces of a printing press weighing several hundred pounds. He indicated that at the end

of his shift he was exhausted, and he stated his belief that the heavy lifting caused his right knee to give out.

Appellant also submitted treatment notes from Dr. Eglevsky. In a note dated June 12, 1996, he indicated that appellant was moving furniture and noted some discomfort in his right knee. Dr. Eglevsky noted that "he continued to perform his duties but the pain became more significant and he went to the Pentagon Health Center where they took x-rays and noted no unusual findings. Because of persistent pain, he eventually had a magnetic resonance imaging (MRI). The MRI suggested a torn medial meniscus." The doctor recommended that appellant undergo an arthroscopy of the right knee.

In a note dated July 8, 1996, Dr. Eglevsky noted that after surgery appellant had almost full range of motion with no swelling and no instability. He stated that appellant "likes to dance and the dancing program that he is involved with does require a lot of activity." Dr. Eglevsky however, advised that appellant should hold off on dancing for six weeks." Appellant was directed to exercise in the meantime.

In a September 7, 1996 decision, the Office denied appellant's claim. Although the Office accepted that appellant had a medial meniscus tear, the Office specifically found that appellant had submitted insufficient medical evidence to establish that his right knee injury was causally related to factors of his federal employment.

The Board finds that appellant failed to carry his burden of establishing that he sustained a right knee injury causally related to his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 within the applicable time limitation 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 compensation is claimed are causally related to the employment injury.[2] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether a "fact of injury" has been established. There are two components involved in establishing fact of injury which must be considered. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged.[4] Second, the

[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *Elaine Pendleton*, *supra* note 2.

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused personal injury.[5] The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.

An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.[6] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified by appellant as causing his injury and, taking these into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his opinion.[7]

In the instant case, the Office found that appellant did not provide sufficient medical evidence to establish that his right knee injury was causally related to her employment. In support of his claim, appellant submitted a surgical report and treatment notes from Dr. Eglevsky. Despite being advised by the Office of the deficiencies in his medical evidence, appellant failed to a submit a rationalized opinion addressing the issue of causal relationship, and therefore failed to discharge his burden of proof. Although Dr. Eglevsky, in his June 12, 1996 treatment note, appears to provide some support for causal relationship in recounting the history of injury provided by appellant, the doctor did not explain with medical reasoning why specific employment factors on a particular date would cause or aggravate the claimed knee condition. Other medical evidence submitted by appellant does not specifically address the cause of appellant's claimed condition. Accordingly, the Office properly denied the claim.[8]

[5] *Id*.

[6] *See Woodhams*, *supra* note 3.

[7] *Id*.

[8] Appellant submitted new evidence on appeal. The Board, however, may only consider evidence that was in the case record that was before the Office at the time that the Office rendered its decision; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from seeking to have the Office to consider such evidence pursuant to a reconsideration request filed with the Office.

The decision of the Office of Workers' Compensation Program dated September 7, 1996 is affirmed.[9]

Dated, Washington, D.C.
November 18, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[9] Record pages three and four appear to pertain to another claimant.