

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALVIN JOSEPH and U.S. POSTAL SERVICE,
POST OFFICE, Amarillo, Tex.

*Docket No. 97-1424; Submitted on the Record;
Issued February 19, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof in establishing that he sustained an injury causally related to factors of employment.

The Board has duly reviewed the case record and finds that appellant failed to meet his burden of proof.

The facts in this case, disease claim, alleging that factors of employment caused degenerative disease of his knees.¹ By letter dated December 12, 1995, the Office informed appellant of the type of information needed to support his claim. By decision dated March 12, 1996, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish fact of injury. In the attached memorandum, the Office acknowledged that the "claimed events, incidents or exposures occurred at the times, places and in the manners alleged" but that appellant had provided insufficient medical evidence to establish that he sustained an employment injury. Appellant timely requested reconsideration and submitted additional evidence. By decision dated January 9, 1997, the Office again denied the claim, finding that appellant's condition was not causally related to employment factors. On January 21, 1997 appellant again requested reconsideration and submitted additional evidence. In a February 11, 1997 decision, the Office denied appellant's request, finding the evidence submitted duplicative. The instant appeal follows.

¹ The instant claim was adjudicated by the Office of Workers' Compensation Programs under number A16-0267550. The record indicates that appellant has permanent work limitations due to a foot condition, adjudicated under Office number A16-0219650. At the time the instant claim was filed, appellant was working in human resources doing clerical duties. The record also contains medical evidence that does not discuss the cause of appellant's knee condition. On April 21, 1995 appellant was granted a schedule award for 9 percent loss of use of the left leg and 14 percent loss of use of the right leg due to his foot condition. This claim is not before the Board in this appeal.

The medical evidence relevant to the cause of appellant's knee condition includes a May 17, 1990 form report, in which Dr. Ira G. Livingston² diagnosed bow legs and early degenerative changes of the articular surface of the medial joint of the right knee. He checked the "no" box, indicating that appellant's condition was not employment related. Dr. A.F. Brooker, a Board-certified orthopedic surgeon, provided a July 26, 1994 report, in which he diagnosed a meniscal tear of the right knee, noting that appellant reported that after playing ping-pong, he awakened with his right knee locked. In an April 10, 1996 report, Dr. Booker advised that he had operated on appellant for a torn medial meniscus, stating:

"I felt this was on top of degenerative change and patellofemoral chondromalacia. I felt this was a work-related circumstance and at arthroscopy this was clearly an acute injury, not just a chronic long-term problem."

In a December 30, 1996 report,³ Dr. Brooker advised that he did not have an opinion regarding the contribution of employment factors prior to August 1, 1994, noting that a "standing" job could cause symptoms regarding appellant's degenerative knee condition "but does not necessarily cause this type of problem." He concluded that he had not seen appellant since July 24, 1995.

The record also contains a position description of the job offer that was accepted by appellant on February 18, 1993, which indicates that he would be sitting eight hours per day with intermittent standing and walking. An undated job offer that was accepted by appellant and stamped received at the employing establishment on September 18, 1995, describes the position as sitting six hours per day and standing/walking one hour per day. In a November 20, 1996 letter, the employing establishment advised that appellant's job required him to walk one to two hours daily.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, 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 the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the factors identified by the claimant 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 factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions

² Dr. Livingston's credentials are unknown.

³ By letter dated December 20, 1996, the Office furnished Dr. Brooker with a statement of accepted facts that included a position description and requested that he provide an opinion with medical ration as to whether appellant's bow legs and knee conditions were employment related. He was to discuss the role of the 1994 ping-pong injury.

and the identified factors. The belief of appellant that the condition was caused or aggravated by the identified factors is not sufficient to establish causal relation.⁴

In the present case, there is no dispute that appellant was a federal employee and that he timely filed a claim for compensation benefits. However, the medical evidence is insufficient to establish that he sustained an employment-related injury because it does not contain a rationalized medical opinion explaining how his leg condition was caused or aggravated by employment factors. While appellant submitted reports from his treating Board-certified orthopedic surgeon, Dr. Brooker, these reports were contradictory and, therefore, of diminished probative value. He did not provide a rationalized medical opinion describing how employment factors caused appellant's knee condition. Consequently, appellant has not met his burden of proof.

The decisions of the Office of Workers' Compensation Programs dated February 11 and January 9, 1997 are hereby affirmed.

Dated, Washington, D.C.

February 19, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁴ *Lourdes Harris*, 45 ECAB 545 (1994).