

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHAEL E. SMITH and U.S. POSTAL SERVICE,  
POST OFFICE, Coppel, TX

*Docket No. 98-94; Submitted on the Record;  
Issued October 1, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant sustained a right meniscus tear condition in the performance of duty causally related to factors of his employment.

On April 4, 1996 appellant, then a 45-year-old mailhandler/equipment operator, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained a "right knee: torn cartilage (meniscus tear)" causally related to his employment factors. On his CA-2 form appellant left blank the date he first became aware of his condition, but alleged that he first became aware that the condition was aggravated by his employment on March 6, 1996. The CA-2 form revealed that appellant notified his supervisor of his condition on April 4, 1996, that he first received medical attention on December 20, 1995 from Dr. Robert J. Hilliard, a Board-certified orthopedic surgeon and that he returned to work on April 30, 1996. In describing the employment activities to which he attributed his condition, appellant stated that beginning May 26, 1984 he worked as a mailhandler, working 8 to 12 hours per day, five to six days per week. Appellant went on to state that his job required him to remain on his feet, except when operating a forklift; and that in his position as a mailhandler, he was required to bend, lift, turn, twist and reach while loading and unloading tractor trailers and containers.

Accompanying the claim form, appellant submitted an attending physician's report from Dr. Hilliard dated December 20, 1995 in which he noted a one-year history of right knee pain. Dr. Hilliard also noted that appellant denied any trauma and pain posteriorly with no swelling, popping, locking or anterior pain. On physical examination, Dr. Hilliard noted x-rays to be normal with no popliteal cyst present. He assessed probable Baker's cyst and recommended a magnetic resonance imaging (MRI) scan. In Dr. Hilliard's medical note of March 6, 1996, he noted that through the MRI scan and ultrasound it appeared that appellant had a tear in the posterior horn of the lateral meniscus and some degeneration of his medial meniscus but no cyst posteriorly. Dr. Hilliard recommended an arthroscopic evaluation of appellant's knee and probable lateral meniscectomy. By report dated March 11, 1996, Dr. Hilliard performed surgery

on appellant's right knee and on March 26, 1996 he noted that he removed the stitches and appellant was doing well. By an attending physician's report (Form CA-20) dated April 2, 1996, Dr. Hilliard indicated that appellant had a one-year history of right knee pain, no history of trauma and that appellant had complaints of swelling and popping. He diagnosed lateral and medial meniscus tear of the right knee, stated that x-rays were normal, indicated by check mark that the condition was caused or aggravated by the employment and explained that appellant's condition "may have been aggravated by physical labor." He noted that appellant could return to light-duty work on April 30, 1996.

By letters dated May 28, 1996, the Office of Workers' Compensation Programs advised appellant and the employing establishment that additional information was required in reference to appellant's claim for a right knee meniscal tear under the Federal Employees' Compensation Act<sup>1</sup> and provided a detailed list of questions.

In a memorandum dated June 26, 1994,<sup>2</sup> received by the Office on June 27, 1996, appellant's supervisor, Mr. Stephens, noted that appellant's job as mailhandler equipment operator was physically exerting requiring him to handle weights and loads beyond normal functions including pushing and pulling containers full of mail to hook up to a jitney and be on his feet all day except when operating a forklift several days a week. He also included a position description for a Mailhandler Equipment Operator -- level five and a duplicate of Dr. Hilliard's, the attending physician, reports.

On May 6, 1996 the employing establishment submitted a complete copy of its medical file for appellant. Included were two forms related to appellant's alleged disability -- the March 11, 1996 hospital bill and a release form from Dr. Hilliard for appellant's return to work following his absence during the period March 11 through April 1, 1996. All other correspondence referenced a left foot condition.

By decision dated July 24, 1996, the Office denied appellant's claim finding that he failed to submit evidence that established the claimed condition was causally related to the accepted employment factors. The Office explained that although appellant provided employment factors to which he attributed his condition, he submitted no medical evidence to demonstrate that the alleged condition was employment related.

By letter dated August 4, 1996, received by the Office on August 9, 1996, appellant requested an oral hearing before an Office hearing representative.

At the April 30, 1997 hearing, appellant stated that he may have filled out the incorrect form. Appellant testified: "[I]n reviewing some of my military records also I do recall at one instance falling on my knee and that may be a bit of a problem that helped cause this problem." He further testified that Dr. Hilliard did not feel that he could commit in his medical report that appellant's knee surgery was job related. Appellant also testified that he does a low impact

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> The Board notes that this memorandum is dated June 26, 1994, however, this is more than likely due to a typographical error, as all other correspondence from J.L. Stephens is dated 1996.

exercise routine and occasionally, but not recently, plays basketball. Appellant reiterated that he fell on his right knee while “in the military and I feel that, that could have started some problems with it, but the most recent problem I recall is when I was at work and I was feeling the tightness of the knee, when it tightened up and I could n[o]t straighten my leg out.”

By decision dated and finalized on August 20, 1997, the Office hearing representative affirmed the July 24, 1996 decision, finding that appellant had not met his burden of proof in establishing that he sustained an injury causally related to factors of his federal employment.

The Board finds that appellant has not established that he sustained an injury in the performance of duty causally related to factors of his federal employment.

An employee seeking benefits under the Act 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 period 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.<sup>3</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicted upon a traumatic injury or an occupational disease.<sup>4</sup>

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 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 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 employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.<sup>5</sup>

The December 20, 1995, March 6, 11 and 26, 1996 reports submitted by appellant from Dr. Hilliard are insufficient to establish causal relationship between appellant’s condition and his work factors as he does not attribute appellant’s Baker’s cyst, tear in the posterior horn of the lateral meniscus nor his medial meniscus tear to factors of appellant’s employment. Dr. Hilliard’s April 2, 1996 opinion that appellant’s lateral and medial meniscus tears of the right

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<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

knee “may have been aggravated by physical labor” is too speculative to satisfy appellant’s burden of proof as specific employment factors are not addressed and the doctor provided no explanation as to how the employment factors caused the injury. Moreover, the doctor’s opinion was couched in terms of probability, thereby rendering his opinion of diminished probative value.<sup>6</sup>

Appellant did not submit medical evidence to establish that his right knee condition was sustained in the performance of duty causally related to factors of his employment.

The decision of the Office of Workers’ Compensation Programs’ hearing representative dated and finalized August 20, 1997, is hereby affirmed.

Dated, Washington, D.C.

October 1, 1999

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> See *Brian E. Flescher*, 40 ECAB 532 (1988).