

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLARENCE COUNCIL and U.S. POSTAL SERVICE
POST OFFICE, Buffalo, NY

*Docket No. 99-1772; Submitted on the Record;
Issued November 2, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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 request for a hearing pursuant to section 8124(b) of the Federal Employees' Compensation Act.

On March 24, 1998 appellant, then a 28-year postal mailhandler, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on March 17, 1998 he bumped his right knee on the edge of a bulk mail container. Appellant stopped work on March 17, 1998.

The employing establishment controverted appellant's claim and indicated that appellant had a previous right knee injury, which required surgery in 1992.

In support of his request, appellant submitted instructions from Kenmore Mercy Hospital dated March 18, 1998 regarding the care of a knee sprain and a note from a nurse practitioner advising that appellant was seen for pain associated with a right knee injury.

Appellant submitted additional documents, which were received by the Office on April 13, 1998. He submitted a March 19, 1998 radiology report from Dr. Jung-JA C. Park, a radiologist, which revealed that there was no evidence of fracture but there were degenerative changes of the right knee joint with joint fluid.

Appellant also submitted a set of March 19, 1998 chart notes from Kenmore Mercy Hospital.

Appellant submitted an April 21, 1998 report from Dr. Leslie Bisson, a Board-certified orthopedic surgeon, who advised that appellant hit his right knee one month earlier. Dr. Bisson stated that appellant's status was post anterior cruciate ligament injury from approximately 1993 and he had two previous knee arthroscopies by Dr. John Marzo, a Board-certified orthopedic surgeon, which resulted in being treated nonoperatively for his anterior cruciate ligament.

Dr. Bisson also stated that appellant had basically gone on to do rather well but ever since an injury at work, he complained of instability and mechanical catching and clicking in his knee. He also stated that appellant had an anterior cruciate ligament insufficient knee with some osteoarthritic changes which was fairly compensated until a recent injury.

In a May 15, 1998 decision, the Office denied appellant's claim for failure to establish a fact of injury.

Appellant, through his attorney, requested a hearing in a letter received by the Office on July 20, 1998 and postmarked on June 16, 1998.

By decision dated July 29, 1998, the Office denied appellant's hearing request as untimely. The Office noted that appellant could have his claim considered further through the reconsideration process.

By letter dated August 18, 1998, appellant's attorney requested reconsideration. Accompanying his request, appellant included statements from former employers who indicated that appellant never complained about his knee condition.

Appellant also included an April 13, 1998 x-ray (radiographic report) from Dr. Kim S. Hwang, a Board-certified diagnostic radiologist, that showed there was a question of an osteochondral defect of the lateral femoral condyle. Degenerative changes of the patellofemoral joint were also present.

In a July 27, 1998 report, Dr. Marzo noted performing right knee arthroscopies on appellant in 1993 and 1994 during which an anterior cruciate ligament tear was discovered. He noted the history of the March 17, 1998 incident and advised that appellant was essentially in good health and essentially functioning normally until the March 17, 1998 injury. At that time, he awkwardly twisted his knee and had fairly significant medial side knee pain. Dr. Marzo diagnosed a right anterior cruciate ligament tear, possible recurrent meniscal tear. He also stated that appellant had been disabled with his recurrent injury since March.

In a letter dated October 16, 1998, appellant's attorney supplied the Office with a report from Dr. Marzo, dated October 8, 1998, who stated that he originally saw appellant in July 26, 1993 when he presented for an injury to his right knee, which he sustained while playing basketball. Evaluation revealed an anterior cruciate ligament tear. Dr. Marzo opined that he rehabilitated from this injury although he made an incomplete recovery. Surgery was performed on August 16, 1993, consisting of a right knee arthroscopy and partial lateral meniscectomy. A complete tear of the anterior cruciate ligament was confirmed at that time. Dr. Marzo indicated that appellant did poorly following his surgery with repeated episodes of instability. Reconstructive surgery was attempted but due to the degenerative changes in the knee anterior cruciate ligament reconstruction was precluded. Dr. Marzo indicated appellant recovered from the surgical procedure, was followed until March 23, 1994, which he failed to keep further appointments until April 1998. He diagnosed anterior cruciate ligament deficiency of the right knee, lateral meniscus tear and lateral joint degenerative disease. Dr. Marzo also opined that he considered appellant's problem chronic, related to his sports injury of 1993. He further stated that, in his opinion, "the injury of March 17, 1998 was an aggravation of the underlying

condition ... generally speaking, that is the clinical course of the anterior cruciate ligament deficient and that they have repeated episodes of instability, likely what occurred in March of 1998.”

Dr. Marzo provided another report dated October 12, 1998, diagnosing chronic right anterior cruciate ligament deficiency and lateral compartment degenerative joint disease. He recommended that appellant undergo anterior cruciate ligament reconstruction of the right knee with appropriate treatment for the lateral compartment.

In a November 23, 1998 report, an Office medical adviser diagnosed a chronic right anterior cruciate ligament deficient knee with lateral compartment degenerative changes. The medical adviser stated that the conditions preexisted the accident and that any temporary aggravation of the underlying arthritis would not have caused a change that would require surgery. The medical adviser advised that any conditions that required surgery were all preexisting. The medical adviser referred to Dr. Marzo’s report of October 8, 1998 and opined that previous anterior cruciate ligament instability caused episode that occurred in March of 1998.

In a November 30, 1998 merit decision, the Office denied modification of its prior decision.

The Board finds that appellant has failed to establish that he sustained a right knee injury in the performance of duty.

An employee seeking benefits under the Act¹ 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.”² 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.³

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.⁴

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

⁴ *Elaine Pendleton*, *supra* note 2.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁵

Regarding the first component, there is no dispute that the claimed incident occurred as alleged on March 17, 1998.

Regarding the second component, however, the Board finds that appellant has failed to establish that his right knee condition was caused by factors of his federal employment.

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to claimant's diagnosed condition. 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 established factor of employment.⁶

In this case, appellant has failed to submit rationalized medical evidence establishing that his right knee condition was caused by factors of his federal employment.

The April 21, 1998 report from Dr. Bisson described appellant's previous injuries and noted that appellant had gone on to do rather well until the March 17, 1998 incident at work involving his right knee. He indicated that, ever since the incident at work, appellant complained of instability and mechanical catching and clicking in his right knee. Dr. Bisson also noted that appellant had an anterior cruciate ligament insufficient knee with some osteoarthritic changes which was fairly compensated until a recent injury. This report is insufficient because, although it provides a diagnosis, it fails to address how and why appellant's right knee condition was caused or aggravated by the March 17, 1998 incident.

The July 27, 1998 report from Dr. Marzo also noted appellant's previous right knee arthroscopies of 1992 and 1994 and indicated that appellant was essentially in good health and functioning normally until March 17, 1998. He indicated that appellant awkwardly "twisted" his knee and had fairly significant medial side knee pain. Dr. Marzo indicated that, in an October 8, 1998 report, that in his opinion, "the injury of March 17, 1998 was an aggravation of the underlying condition ... generally speaking, that is the clinical course of the anterior cruciate ligament deficient and that they have repeated episodes of instability, likely what occurred in March of 1998." However, the Board notes that this description of appellant's injury does not appear to be accurate as appellant contends that, "he bumped his right knee on the edge of a bulk mail container." The Board has long held that medical opinions based on an incomplete or

⁵ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁶ *Ern Reynolds*, 45 ECAB 690 (1994); *Melvina Jackson*, 38 ECAB 443 (1987); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

inaccurate factual background are entitled to little probative value in establishing claims for compensation.⁷ As the information supplied by Dr. Marzo was inaccurate, the opinions are insufficient to establish appellant's claim.⁸ The Board finds that this medical evidence is of little probative value in establishing a causal relationship between appellant's condition and his March 17, 1998 work injury.

In as much as appellant has failed to submit rationalized medical evidence to establish that his right knee injury was caused by factors of his federal employment, the Board finds that appellant has failed to establish that he sustained an injury while in the performance of duty on March 17, 1998.⁹

The Board further finds that the Office properly denied appellant's request for a hearing pursuant to section 8124(b) of the Act.

Section 8124(b) of the Act,¹⁰ concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."¹¹

The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.¹² Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing and must exercise this discretion.¹³

In the instant case, the Office properly determined appellant's June 16, 1998 request for a hearing was not timely filed as it was made more than 30 days after the issuance of the Office's May 15, 1998 decision. The hearing request was postmarked on June 16, 1998, which was 31 days after issuance of the June 16, 1998 decision. The Office, therefore, properly denied appellant's hearing as a matter of right.

The Office then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. The Office determined that a hearing was

⁷ *Clarence E. Brockman*, 40 ECAB 753 (1989); *Carl E. Hendrickson*, 35 ECAB 593 (1984); *James A. Wyrich*, 31 ECAB 1805 (1980); *John W. Pettigrew*, 6 ECAB 941 (1954).

⁸ *Rex A. Link*, 35 ECAB 253, 255 (1983).

⁹ Following the issuance of the Office's November 30, 1998 decision, the appellant submitted additional evidence. However, the Board may not consider such evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ 5 U.S.C. § 8124(b)(1).

¹² *Tammy J. Kenow*, 44 ECAB 619 (1993).

¹³ *Id.*

not necessary as the issue in the case could be equally addressed by requesting reconsideration from the district Office and submitting evidence not previously considered which establishes that appellant suffered a work-related injury on March 17, 1998. Therefore, the Office properly denied appellant's request for a hearing as untimely and properly exercised its discretion in determining to deny appellant's request for a hearing as he had other review options available.

Consequently, the decisions of the Office of Workers' Compensation Programs dated November 30 and May 15, 1998 are hereby affirmed.

Dated, Washington, DC
November 2, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member