U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILFREDO CARRILLO and DEPARTMENT OF THE TREASURY, U.S. CUSTOMS SERVICE, Miami, FL

Docket No. 99-2384; Submitted on the Record;
Issued November 20, 2000

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained an injury on April 14, 1996 while in the performance of his duties; and (2) whether appellant sustained an injury on December 8, 1998 while in the performance of his duties.

On April 15, 1996 appellant, a customs inspector, filed a claim asserting that, while walking toward a baggage facility the day before, he stepped off a two-foot drop and twisted his leg and ankle and right knee.

The Office of Workers' Compensation Programs requested additional information.

In a report dated April 15, 1996, Dr. John Zvijac, an orthopedist, related a one-day history of right knee pain, which first began when appellant stepped down off a two-foot drop. Dr. Zvijac diagnosed a right medial meniscal tear. Appellant submitted a few additional medical documents but nothing that attributed his right medial meniscal tear to the incident of April 14, 1996.

In a decision dated February 2, 1999, the Office denied appellant's claim on the grounds that appellant failed to establish fact of injury. The Office found that appellant actually experienced the claimed employment factor incident but failed to submit a narrative medical opinion, with reasons for such opinion, discussing the relationship between the incident on April 14, 1996 and his claimed condition or disability.

The Board finds that appellant has failed to make a *prima facie* claim for compensation.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of his claim. When an employee claims that

[1] 5 U.S.C. §§ 8101-8193.

he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.[2]

The Office accepts that appellant stepped off a two-foot drop on April 14, 1996 while walking to a baggage facility in the performance of his duties. The question for determination is whether this incident caused the diagnosed condition of right medial meniscal tear.

Causal relationship is a medical issue,[3] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[4] must be one of reasonable medical certainty,[5] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[6]

Appellant has submitted no such medical opinion. Dr. Zvijac's report relates the history of injury given to him by appellant and diagnoses a right medial meniscal tear, but it offers no medical opinion on the issue of causal relationship. Because appellant has submitted no medical opinion evidence to support an essential element of his claim, namely, that he sustained an injury on April 14, 1996 when he stepped off a two-foot drop, the Board finds that he has failed to establish a *prima facie* claim for compensation.[7]

On February 2, 1999 appellant filed a claim asserting that he sustained an injury on December 8, 1998 while attempting to start various government cars. He stated that he pulled a battery out and when it slipped, he twisted his right knee. A witness stated: "As the car coordinator, [appellant] twisted his knee. It was evident from the severe limping that he was injured." Appellant stopped work the following day but returned to work on December 16, 1998. He first obtained medical treatment on December 23, 1998. The employing establishment did not controvert continuation of pay. Appellant's supervisor indicated that she agreed with the statements of appellant and the witness.

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[2] *See generally John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); *see also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15)-.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

[3] *Mary J. Briggs*, 37 ECAB 578 (1986).

[4] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[5] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[6] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[7] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.2.g., .3.a. (April 1993) (a person claiming compensation must show sufficient cause for the Office to proceed with processing and adjudicating a claim by submitting the essentials of a *prima facie* case).

On December 23, 1998 Dr. Richard J. Simon, an orthopedist, related appellant's history as follows:

> "Patient is a 54-year-old gentleman who complains of two years of right knee pain, worse in the last week. He has knee pain and swelling, pain going up and down stairs, pain and stiffness when seated. Patient has pain when standing, walking, squatting and after running. He states in 1996 he had a work-related injury on the knee and was told he had a torn cartilage but never had an MRI [magnetic resonance imaging] or surgery. Patient states he [ha]s had trouble with his knee since. Recently or since 1996 there has been no new incident or accident."

Dr. Simon gave his impression as right knee medial and lateral meniscal tears. He noted that appellant might require arthroscopic debridement.

In a report dated February 23, 1999, Dr. Zvijac related appellant's history as follows:

> "The patient states that back on December 8[, 1998] he twisted his right knee and had swelling and pain along the medial aspect of his knee. He has been tried on anti-inflammatories and ice without relief of his symptoms. He continues with significant swelling of his right knee and also pain with ambulation, squatting, or twisting activities."

Dr. Zvijac gave his diagnostic impression as right medial meniscal tear by history and clinical examination. He indicated that he would schedule surgical intervention.

In a memorandum dated March 9, 1999, the employing establishment's injury compensation specialist advised the Office as follows:

> "During early December [appellant] contacted me regarding problems with his right knee. During the discussions he indicated to me that the original injury had never fully recovered and he was still having problems with the knee. He never indicated that he had an injury on December 8, 1998 or that there was any traumatic injury that would have caused the problem. In light of that I recommended that he file a CA-2a, for a recurrence. He subsequently requested all of his previous CA-1's, which I forwarded to him. His claim of recurrence was denied on February 2, 1999.
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> "On or about February 2, 1999 [appellant] then stated that the injury was due to an accident on December 8, 199[8]. I questioned him if there were witnesses, he stated yes and I informed him to complete a CA-1 with the witness statement."

On December 17, 1998 appellant filed a Form CA-2a, notice of recurrence and claim for continuation of pay/compensation. He made no mention of the battery incident on December 8, 1998, claiming instead that he sustained a recurrence on May 14, 1997, that working his regular tour made his knee swell and that "last week was the culmination." His supervisor reported that

she had noticed appellant limping "in the past week or so" and that he had taken sick leave because of this injury.

In a form report dated March 5, 1999, Dr. Zvijac related appellant's history as "December 8[, 1998] twisted knee, swelling/pain." With an affirmative mark he indicated that appellant's torn medial meniscus was caused or aggravated by the employment activity described.

Appellant explained that he was out from work beginning December 9, 1998 and reported the injury in writing on December 17, 1998. "I called the supervisor everyday and I spoke to the OWCP coordinator on the phone and he advised I file a CA-2a since it was the same knee and location." Appellant further described how the injury occurred: "Replacing car battery (I'm in charge of cars for team). I pulled battery out (weighs 50-100 pounds) battery slipped from hand and I pulled foot out of way back and cars all park in rocky dirt field. I felt sharp pain on side of knee. I was in pain as knee twisted to right as I was unbalanced."

In a report dated March 17, 1999, Dr. Patrick J. Barry, an orthopedic surgeon, stated that appellant dated the onset of his most recent problems to December 8, 1998, at which time he was changing a car battery and it slipped from his hands. He twisted his knee when he stepped back. Dr. Barry noted that appellant's problem initially dated back to April 13, 1996, at which time he was diagnosed with a torn meniscus. Appellant's pain completely cleared and he paid no further attention to his knee until May 1997, when he hit his knee against a door. Pain recurred but cleared. Dr. Barry diagnosed unstable right knee secondary to tear, medial meniscus; chondromalacia medial femoral condyle secondary to above; quadriceps atrophy with resulting lateral tracking syndrome secondary to all of above; effusion knee and loss of motion secondary to above; and pseudo gout, bilateral, unrelated to all of above. Dr. Barry reported that appellant started out with a relatively simple meniscal tear "and his problems have progressed."

In a supplemental report dated March 23, 1999, Dr. Barry again related appellant's basic history. He explained that appellant first tore his meniscus in April 1996 and as time went on the tear continued to extend. As it extended, appellant developed a chondromalacia of the femoral condyle and was now close to developing a few symptoms of arthritis. He noted that appellant's muscle had started to shrink and that his patella was no longer working properly.

In a decision dated April 7, 1999, the Office denied appellant's claim on the grounds that fact of injury on December 8, 1998 was not established. The Office found that the contemporaneous medical records did not document that a new injury occurred.

The Board finds that the evidence of record fails to establish that appellant sustained an injury on December 8, 1998 while in the performance of his duties.

A person who claims benefits under the Act has the burden of establishing by a preponderance of the reliable, probative and substantial evidence the essential elements of his claim, including the fact that he sustained an injury at the time, place and in the manner alleged.[8]

[8] *Henry W.B. Stanford*, 36 ECAB 160 (1984); *Samuel L. Licker*, 4 ECAB 458 (1951).

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[9]

In his report of December 23, 1998, Dr. Simon related appellant's history of injury but made no mention of an injury on December 8, 1998. In fact, Dr. Simon reported, "Recently or since 1996 there has been no new incident or accident." The employing establishment's injury compensation specialist advised that appellant had contacted him in early December regarding problems with his right knee but never indicated that he had an injury on December 8, 1998 or that there was any traumatic injury that would have caused the problem. These facts are inconsistent with appellant's claim that he sustained an injury on December 8, 1998 when a car battery that he had pulled slipped, causing him to twist his knee.

Appellant has not explained the reason he told Dr. Simon, only two weeks after this alleged incident, that there was no new incident or accident. Appellant has also not explained his failure to mention this alleged incident to the employing establishment's injury compensation specialist when he contacted the specialist in early December regarding problems with his right knee. These inconsistencies are substantial enough to cast serious doubt on the validity of appellant's claim. As appellant has failed to provide an explanation sufficient to remove this doubt, he has failed to meet his burden of proof to establish that he sustained the injury as alleged.[10]

[9] *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); *see also George W. Glavis*, 5 ECAB 363 (1953).

[10] That appellant stopped work on December 9, 1998, that his supervisor noticed him limping about this time and that he sought medical attention on December 23, 1998 may support an injury on or about December 8, 1998, but none of these facts resolves the inconsistencies noted. Further, the Board notes that the brief statement of appellant's witness fails to describe what happened on December 8, 1998 or to demonstrate that the witness actually observed the incident alleged.

The April 7 and February 2, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
November 20, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member