U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWRENCE R. HAYWOOD and U.S. DISTRICT COURT, EASTERN DISTRICT OF MISSOURI, PRETRIAL SERVICES, St. Louis, MO

Docket No. 02-1616; Submitted on the Record;
Issued December 10, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a right knee injury on November 28, 2001 in the performance of duty.

On December 11, 2001 appellant, then a 45-year-old pretrial services officer, filed a traumatic injury claim alleging that on November 28, 2001 he injured his right knee when he slipped and fell on a wet floor of the courthouse where he worked. Appellant indicated on the claim form that he received medical care on the date of injury; however, a diagnosis was unknown at that time. The claim form also contained a witness statement from Patricia Barnes. She stated: "[appellant] came into our office after falling in the lobby of the courthouse and said, "you are not going to believe what just happened, it was wet (raining heavily) and I slipped and fell when I came into the courthouse." Within minutes, his right knee started swelling up." Appellant stopped working that day and returned on December 18, 2001.

In support of the claim, appellant submitted treatment notes from Dr. Craig Aubuchon, a Board-certified orthopedic surgeon, dated from December 3, 2001 to January 14, 2002 and physical therapy reports. In a December 3, 2001 report, he stated that appellant presented with swelling in his knee and he indicated that appellant might require aspiration of that knee after he fell on the steps and had blood in the knee. Dr. Aubuchon further indicated that appellant's previous surgery record and a magnetic resonance imaging (MRI) scan performed in the hospital revealed that appellant at one time had an anterior cruciate ligament (ACL) tear.

In a December 4, 2001 report, Dr. Aubuchon stated that appellant had a lot of swelling and blood-tinged fluid in his knee and that he could do sedentary work the following week.

In a December 18, 2001 report, Dr. Aubuchon stated that appellant's right knee was improving with more motion and strength; however, he still had a large effusion so the fluid was drained from the area. He then released appellant for sedentary work.

In a physical therapy report dated December 24, 2001, the claimed event was referenced as "November 28, 2001 slipped on floor-fell on knee." The physical therapy noted a diagnosis of right knee meniscal tear.

In a letter dated January 24, 2002 the Office of Workers' Compensation Programs advised appellant that the information submitted was insufficient to establish the claim. The Office indicated that the claim form showed that appellant first received medical treatment on November 28, 2001 thus, the Office requested medical records in connection with the claimed injury from November 28 through December 2, 2001, the time period missing from the submitted evidence. The Office advised that such records should include: a history of injury given by appellant to the physician, x-rays and laboratory tests, a definitive diagnosis specifically resulting from the November 28, 2001 incident and an opinion supported by a medical explanation as to how the reported incident caused or aggravated the claimed injury.

In response, appellant provided factual evidence, that he had arthroscopy to his right knee in July 1983 to remove a torn meniscus. He also submitted documentation including a February 4, 2002 report from Dr. Aubuchon, a Form CA-16 and physical therapy notes. In the February 4, 2002 report, Dr. Aubuchon stated:

> "[Appellant] had his knee arthroscoped and he had a lateral extensive release and had an injury at work and he swelled up quite a bit. He was diagnosed by the emergency room as having a quadriceps tendon rupture and he came to the hospital. We repaired his quadriceps tendon rupture but on exam[ination] he did not have that. We cancelled the surgery, got an MRI [scan] which shows quadriceps tendon was intact. There was a question on the MRI [scan] of an anterior cruciate ligament tear…."
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> "It is my impression that [appellant] can continue to work without restrictions, that he has an effusion related to his original surgery with a lateral retinacular release, that he has underlying arthritis of his knee which was found at the time of the knee arthroscopy. At this time I feel that his swelling is going to resolve and resorb with time…."

By decision dated February 28, 2002, the Office rejected appellant's claim finding that he had failed to establish fact of injury. The Office found that the incident occurred as alleged but that appellant had failed to submit rationalized medical evidence establishing that a specific medical condition resulted.[1]

[1] Subsequent to the issuance of the Office's February 28, 2002 decision, appellant submitted additional medical evidence into the record, including emergency treatment notes and laboratory reports dated November 28 and 29, 2001 and other medical reports from Dr. Aubuchon dated from October 15, 2001 to January 7, 2002. The Board cannot review this evidence on appeal, as the Board's jurisdiction is limited to reviewing the evidence and arguments that were before the Office at the time of its final decision; *see Lloyd E. Griffin, Jr.,* 46 ECAB 979 (1995); *Carroll R. Davis,* 46 ECAB 361 (1994). Appellant can submit that evidence to the Office along with a request for reconsideration.

The Board finds that appellant has not met his burden in establishing that he sustained a right knee injury on November 28, 2001 in the performance of duty.

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[2] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[3] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[4]

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.[5] Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance of duty and that her disability was caused or aggravated by her employment.[6] As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.[7] The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.[8] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.[9]

In this case, appellant claimed that he injured his right knee on November 28, 2001 when he slipped and fell on a wet floor and that significant swelling resulted. He indicated on the claim form that he immediately received medical treatment; however, a diagnosis was unknown at that time. Appellant submitted medical evidence in support of his claim, however, despite a request from the Office for pertinent medical records including those indicating treatment on November 28, 2001 that contain a specific diagnosis of his condition, the requisite evidence was not submitted within the allotted timeframe.

The evidence of record submitted prior to the issuance of the Office's February 28, 2002 decision does not indicate that a right knee injury and swelling had been specifically diagnosed as being related to the incident of November 28, 2001. The evidence is vague as to the nature of any knee condition sustained during the claimed event and speculative on the issue of causal

[2] *See John J. Carlone*, 41 ECAB 354 (1989).

[3] *Id*.

[4] *See Carlone*, *supra* note 2.

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

[6] *See Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

[7] *See Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

[8] *See Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

[9] *Id*.

relationship. The evidence merely showed that appellant was misdiagnosed in the emergency room as having sustained a quadriceps tendon rupture after an injury at work, which was later found intact and that he previously had underlying arthritis of his knee and effusion related to an arthroscopic surgery performed in 1983. Dr. Aubuchon did indicate, in his December 3, 2001 report, that appellant might require aspiration of his knee after he fell on the steps and had blood in the knee and in his February 4, 2002 report that appellant "had an injury at work and swelled up quite a bit." However, Dr. Abuchon merely attributed appellant's swelling and blood in the knee to "a fall on the steps" without providing a date of injury, the actual history given by appellant in his claim form, a diagnosis for the condition or supporting rationale.

The Board notes that the record contains physical therapy reports, namely a report dated December 24, 2001, which indicated that appellant sustained an injury on November 28, 2001 when he slipped on a wet floor and fell on his knee. However, the treatment notes of appellant's physical therapists are of no probative value inasmuch as a physical therapist is not a physician under the Federal Employees' Compensation Act and, therefore, is not competent to give a medical opinion.[10]

In its February 28, 2002 decision, the Office accepted that appellant's slip and fall incident occurred as alleged but denied his claim because the record contained no medical evidence establishing that the accepted employment incident caused or contributed to a diagnosed medical condition. The Office advised appellant prior to its ruling that a physician's explanation was crucial to his claim. Because appellant submitted no reasoned medical opinion evidence to support that appellant's employment incident on November 28, 2001 caused or aggravated a diagnosed medical condition, he has failed to meet his burden of proof.

[10] 5 U.S.C. § 8101(2); *see also Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983).

The decision of the Office of Workers' Compensation Programs dated February 28, 2002 is affirmed.[11]

Dated, Washington, DC
December 10, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[11] Appellant filed his appeal with the Board on June 4, 2002 and the Office received a request for reconsideration on June 26, 2002. It is well established that the Board and the Office may not exercise concurrent jurisdiction over the same issue in the case and, therefore, any decision by the Office on appellant's request for reconsideration would be null and void. *Douglas E. Billings*, 41 ECAB 880 (1990).