

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROGER L. BELCHER and U.S. POSTAL SERVICE,  
POST OFFICE, Jackson, NJ

*Docket No. 02-62; Submitted on the Record;  
Issued June 19, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained bilateral knee injuries in the performance of duty causally related to factors of his federal employment.

On August 14, 2000 appellant, then a 46-year-old letter carrier, filed a claim alleging that he sustained bilateral knee injuries as a result of repeatedly leaving his mail truck. He stopped work on March 15, 1999 and resigned from the employing establishment on September 16, 1999.

In a letter dated October 2, 2000, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

In response to the Office's request, appellant submitted a narrative statement indicating that he was diagnosed with osteoarthritis of both knees in March 1996 and underwent a total knee replacement on the left knee. He indicated that his job entailed walking, climbing stairs and dismounting his vehicle which he believed caused his bilateral knee condition.

In a decision dated November 8, 2000, the Office denied appellant's claim for compensation under the Federal Employees' Compensation Act.<sup>1</sup> The Office found that the medical evidence was not sufficient to establish that his medical condition was caused by employment factors.

By letter dated November 14, 2000, appellant requested a hearing before an Office hearing representative. The hearing was held on April 24, 2001. Appellant testified that he had several surgeries on his left knee in 1970 and 1971 prior to his job with the employing

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

establishment. He noted that he was hired in 1989 as a substitute carrier and became a full-time carrier in 1994. Appellant indicated that he had no knee problems the first five years with the employing establishment until 1999 when he had surgery for his left knee. He stated that he attempted to return to his position with the employing establishment after his surgery in 1999; however, the employer advised him that there was no light duty available. Thereafter, appellant resigned and is currently working as a security guard.

Appellant also submitted various medical records from Dr. Mark A. Hartzband, a Board-certified orthopedic surgeon, dated October 18, 1990 to April 26, 2001. Dr. Hartzband noted appellant's medical history was significant in that appellant had sustained an injury to his right knee in 1974 for which he underwent a medial meniscectomy and excision of a cyst. His note from November 7, 1994 indicated appellant was treated for degenerative arthritis of the left knee. Dr. Hartzband's reports from July 12, 1996 to October 27, 1998 noted appellant's continued left knee discomfort. On April 15, 1999 he indicated that appellant underwent a total knee arthroplasty of the left knee on March 29, 1999 and was progressing well. Dr. Hartzband's note of July 15, 1999 indicated that appellant had severe osteoarthritis in both knees which was compounded by his occupation. He remarked that he doubted appellant's ability to return to his previous occupation as a letter carrier, in that pounding while carrying a heavy mailbag of letters would increase the rate of wear on his left total knee arthroplasty. Dr. Hartzband's report of November 22, 2000 indicated that appellant underwent five operations on his left knee and three on his right knee. The April 26, 2001 report noted that with a reasonable degree of medical certainty appellant's bilateral knee condition was exacerbated by his letter carrier duties. Dr. Hartzband again noted that walking long distances and carrying a heavy mailbag exacerbated appellant's bilateral knee condition.

By decision finalized on June 26, 2001, the hearing representative affirmed the Office's decision of November 8, 2000.

The Board finds that appellant has failed to establish 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 the 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>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

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

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<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

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.<sup>4</sup> In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.<sup>5</sup> An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.<sup>6</sup> A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury, can also be evidence of the occurrence of the incident.<sup>7</sup>

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 claimed, as well as any attendant disability, 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.<sup>8</sup>

Rationalized medical opinion evidence is medical evidence which includes a physician's 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>9</sup>

In the instant case, it is not disputed that appellant walked and dismounted a mail truck during his mail route. However, appellant has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the employment factor and that any alleged aggravation of a bilateral knee condition is causally related to the employment factors or conditions. On October 2, 2000 the Office advised appellant of the type of medical evidence needed to establish his claim.

Appellant submitted several reports from Dr. Hartzband documenting his bilateral knee condition since 1974. Dr. Hartzband indicated that appellant underwent five operations on his

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<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

<sup>7</sup> *Id.* at 255-56.

<sup>8</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>9</sup> *James Mack*, 43 ECAB 321 (1991).

left knee and three on his right knee including a medial menisectomy and excision of a cyst in 1974 and was treated for degenerative arthritis of the left knee in 1994. His note of April 15, 1999 indicated that appellant underwent a total knee arthroplasty of the left knee on March 29, 1999. Dr. Hartzband's treatment notes of July 15, 1999 and April 26, 2001 indicated that appellant had severe osteoarthritis in both knees which was compounded by his occupation. He noted that he had "great doubt as to [appellant's] ability to return to his previous occupation as a letter carrier, in that pounding while carrying a heavy mailbag of letters will increase the rate of wear on his left total knee arthroplasty." The Board finds that Dr. Hartzband's restrictions on appellant's return to work were prophylactic in nature and that fear of future injury is not compensable under the Act.<sup>10</sup> Dr. Hartzband further indicated that with a reasonable degree of medical certainty appellant's bilateral knee condition was exacerbated by his letter carrier duties. Although he supported causal relationship in this conclusory statement he did not provide a rationalized opinion regarding the causal relationship between appellant's bilateral knee condition and the employment incident believed to have caused or contributed to such condition.<sup>11</sup> Additionally, Dr. Hartzband did not explain how appellant's preexisting bilateral knee condition including numerous knee operations may have affected his condition. Even though he noted that appellant was experiencing symptoms of his bilateral knee condition that were exacerbated by his employment, without any further explanation or rationale, such report is insufficient to establish a causal relationship.<sup>12</sup> Therefore, these documents are insufficient to meet appellant's burden of proof.

Additionally, the Board notes that Dr. Hartzband did not indicate an accurate knowledge of appellant's work duties. In his reports dated November 8, 2000 and April 26, 2001, he stated that appellant was "walking long distances and carrying a heavy mailbag with stooping, bending, twisting and turning associated with being a letter carrier exacerbated his bilateral knee condition;" however, the record does not indicate that appellant at any time had to walk long distances carrying a mailbag. The Board notes that Dr. Hartzband's reports do not indicate that he is familiar with appellant's employment duties or employment history.<sup>13</sup> Therefore, these reports are insufficient to meet appellant's burden of proof.

The remainder of the medical evidence fails to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is

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<sup>10</sup> See *Mary Geary*, 43 ECAB 300, 309 (1991); *Pat Lazzara*, 31 ECAB 1169, 1174 (1980) (finding that appellant's fear of a recurrence of disability upon return to work is not a basis for compensation).

<sup>11</sup> *Id.*

<sup>12</sup> *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

<sup>13</sup> See *Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

sufficient to establish causal relationship.<sup>14</sup> Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated June 26, 2001 and November 8, 2000 are affirmed.

Dated, Washington, DC  
June 19, 2002

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>14</sup> See *Victor J. Woodhams, supra* note 3.