U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID P. WALKER and DEPARTMENT OF THE INTERIOR, FISH & WILDLIFE SERVICE, Kenmare, ND

Docket No. 02-1845; Submitted on the Record;
Issued November 6, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a left knee injury in the performance of duty.

On December 11, 2001 appellant, then a 40-year-old fire management officer, filed a traumatic injury claim, alleging that on or about July 2, 2001 he sustained a "progressive injury to his left knee, possible torn cartilage and inflamed soft tissue," while performing duties including extensive running and field work related to fire management responsibilities. He did not stop work.

Accompanying the claim, appellant submitted a narrative statement dated October 17, 2001 in which he stated:

> "During this past fire season I have been having reoccurring (sic) pain in my left knee. It is now preventing me from participating in running/hiking during PT and will most likely continue to be a problem in the future. I believe it is related to torn cartilage as it acts and feels much like a previous cartilage injury to my right knee…. "Although this is not attributable to a single accident or injury and tends to develop over time with activity and wear/tear, I believe this to be job related. I have been actively involved in fire management activities since 1981, requiring a high level of strenuous, physical activity in a variety of terrain and conditions as well as rigorous PT activities to maintain my level of fitness. I encountered similar problems following the 1994 fire season which required simple orthoscopic surgery to remove torn cartilage."

The Office of Workers' Compensation Programs later received a medical report dated March 15, 2002 from Dr. Bernard Varnburg, a Board-certified orthopedic surgeon, which evidenced treatment of appellant's left knee. In the March 15, 2002 report, he stated that appellant presented with problems with his left knee since July of the prior year, with mild general and posterior discomfort and throbbing with no swelling, locking or instability. The

physician reported that appellant was fairly active and worked out on a daily basis and that he controlled the reported pain with decreased activity. Dr. Varnburg also discussed that appellant had a history of injury to his other knee with what he called "corrective cartilage surgery." He reported that x-rays revealed a slight spurring of the superior pole of the left patella, with no evidence of fracture and dislocation or other notable abnormalities. Dr. Varnburg indicated that he discussed overuse type syndromes with appellant and opined that he was "probably getting into this somewhat." He noted that appellant had been very active over the years and that his knees were starting to wear out. Dr. Varnburg enclosed with the report a request for authorization for a magnetic resonance imaging (MRI) scan of appellant's left knee, which he had scheduled on April 19, 2002.

In a letter dated April 22, 2002, the Office advised appellant that additional information was necessary so that his claim could be formally adjudicated. The Office requested that appellant request from his attending physician a detailed narrative report which included: history of injury and all prior industrial and nonindustrial injuries to similar parts of his body, examination findings, test results, diagnostic treatment provided, prognosis, period and extent of disability and an opinion on the relationship of the diagnosed condition to his federal employment activity.

The Office received an April 15, 2002 report from Dr. Varnburg, who indicated that appellant continued to have problems with his left knee. The physician related that, on the prior Friday, appellant, while preparing for his summer activities and for his physical fitness, went out and ran a mile and a half and that since that occasion he had experienced fairly significant pain and swelling. Dr. Varnburg indicated following his examination that appellant could have patellofemoral syndrome or a degenerative tear in his meniscus. The Office thereafter received the results of an MRI performed on April 24, 2002, which diagnosed appellant with degenerative meniscus.

By decision dated May 30, 2002, the Office denied the claim on the grounds that the evidence was insufficient to establish that his condition was caused by the injury alleged as required by the Federal Employees' Compensation Act.

The instant appeal follows.[1]

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a left knee injury in the performance of duty.

An employee seeking benefits under the Act[2] has the burden of proof to establish the essential elements of his claim.[3] When an employee claims that he sustained an injury in the

[1] The Board notes that appellant initially requested a review of the written record in a letter dated June 24, 2002, to the Office and submitted additional medical evidence. In a letter dated July 9, 2002, the Office advised appellant that he submitted his hearing request to the district Office instead of the Branch of Hearings and Review, thus the Office furnished appellant with an additional copy of his appeal rights and advised him to submit his request to the proper office for consideration. Appellant thereafter filed an application for review with the Board on July 2, 2002.

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Margaret A. Donnelley*, 15 ECAB 40 (1963).

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.[4]

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. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[5]

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.[6]

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.[7]

In the instant case, it is not disputed that appellant experienced recurring knee pain while performing physical activities at work. However, he has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with employment factors and that his diagnosed degenerative meniscus knee condition is causally related to the employment incident. On April 22, 2002 the Office advised appellant of the type of medical evidence needed to establish his claim. He did not submit any medical report from his attending physician addressing how specific employment factors may have caused or aggravated his left knee.

The treatment reports from Dr. Varnburg dated March 12 and April 15 and 24, 2002 indicated that appellant was treated for problems with his left knee since July of the prior year.

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[4] *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined); *see Margaret A. Donnelley*, *supra* note 3.

[5] *John J. Carlone*, *supra* note 4.

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

[7] *James Mack*, 43 ECAB 321 (1991).

He noted appellant's athletic lifestyle and that his symptomology persisted with activities such as running. In the April 15, 2002 report, Dr. Varnburg surmised that appellant might have had patellofemoral syndrome or a degenerative tear in his meniscus and the April 24, 2002 MRI report revealed degenerative meniscus of the left knee. None of the reports submitted contained a rationalized opinion regarding the causal relationship between appellant's left knee condition and the incidents of employment believed to have caused or contributed to such condition. As appellant failed to submit the necessary medical opinion evidence, he failed to meet his burden of proof and the Office properly denied his claim.[8]

The decision of the Office of Workers' Compensation Programs dated May 30, 2002 is affirmed.

Dated, Washington, DC
November 6, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member

[8] With his appeal appellant submitted additional medical evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from having the Office consider this evidence as part of a reconsideration request.