United States Department of Labor
Employees' Compensation Appeals Board

DAVID HOMER, Appellant	)	
and	)	**Docket No. 03-2280**
	)	**Issued: December 15, 2003**
U.S. POSTAL SERVICE,	)	
POST OFFICE, Oakland, CA, Employer	)	

Appearances:
David Homer, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 23, 2003 appellant filed a timely appeal from the decisions of the Office of Workers' Compensation Programs dated February 19, July 29 and August 19, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant established that his claimed right knee condition is causally related to factors of his employment; and (2) whether the Office properly refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 14, 2002 appellant, then a 42-year-old former mail handler, filed an occupational disease claim alleging that his employment duties for the period April 18, 1984 to July 27, 2001 aggravated his preexisting service-related knee injury, sustained in 1979. He last worked for the employing establishment on July 27, 2001. Appellant asserted that, on

October 10, 2002, his knee gave out while walking, causing him to fall. He sought medical treatment on October 17, 2002 and was diagnosed with severe osteoarthritis tricompartment. Appellant explained that it was at this point that he first realized his knee condition had considerably worsened. In response to a request by the Office dated January 17, 2003, appellant submitted additional medical and factual evidence in support of his claim.

In a decision dated February 19, 2003, the Office found the evidence of record insufficient to establish that appellant's current right knee condition was causally related to his employment. On February 25, 2003 appellant requested an oral hearing, but subsequently changed his request to one for reconsideration and submitted additional medical evidence in support of his requests. In a merit decision issued July 29, 2003, the Office found the newly submitted evidence insufficient to warrant modification of its prior decision. The Office specifically stated that appellant failed to submit the requested information regarding his military reserve activities and all of the early Veterans Administration (VA) medical records detailing the exact nature of appellant's service-related right knee injury.[1] The Office stated that these early medical records were necessary so that a second opinion physician could determine, based on an accurate and complete history, physical examination and review of diagnostic studies, whether the medical records and diagnostic studies represented the natural progression of appellant's pathophysiological process of his right knee, irrespective of duties performed in his federal employment. By letter dated August 11, 2003, appellant again requested reconsideration of the Office's prior decision. In a decision dated August 19, 2003, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that appellant's request neither raised substantial legal questions nor included new and relevant evidence and, thus, it was insufficient to warrant review of its prior decision.

In support of his claim, appellant submitted the results of x-rays performed on February 24, 2000, which revealed degenerative joint disease of the right knee with probable osteochondral loose body and a magnetic resonance imaging (MRI) scan performed on January 27, 2003 which revealed complex tears of the posterior horns of both the medial and lateral menisci, moderate changes of osteoarthritis involving the medial and lateral compartments, an anterior cruciate ligament (ACL) tear which may be chronic, chondromalacia of the patella and small joint effusion.

Appellant also submitted several documents from the VA pertaining to his service-related disability. A VA rating decision dated October 4, 1993 noted that appellant carried a disability rating of ten percent for a service-related right knee disability and noted that appellant was seeking an increase in his award. The memorandum indicates that, in support of his request, appellant had submitted reports of treatment from a Dr. Chow dating from June 13, 1990 to

[1] In a letter to appellant dated June 25, 2003, and in a telephone conversation held on June 30, 2003, the Office explained to appellant exactly what he needed to submit in support of his claim.

December 3, 1992, medical reports from a Dr. Kofoed dated September 23, 2001 and March 2, 1993 and a VA examination dated July 8, 1993.[2] The VA granted appellant an increase in his disability rating to 20 percent, stating:

> "Medical reports from Dr. Chow show [appellant] was seen on October 1[,] [19]92 for recurring right knee pain in the medial collateral ligament area. On December 3[,] [19]92 he was seen for right knee medial instability. [A] [m]edical report [dated] March 2[,] [19]93 from Dr. Kofoed show [that] [appellant] complained of giving way sensation in the right knee. Impression was right knee instability. He was given a prescription for a knee brace with medial lateral support. At [the] VA exam[mination] [appellant] walked without a limp. There was moderate ligament laxity in the anterior cruciate ligament and mild laxity of the medial collateral ligaments. Range of motion was 130/140 degrees."

The record also contains an October 8, 1993 VA award granting appellant an additional 10 percent disability, for a total of 20 percent, for his right knee injury, as well as a January 15, 2003 letter from the VA certifying that appellant was found 20 percent disabled due to a service injury.

Appellant also submitted progress notes from Dr. Kenneth Shedd, a Board-certified internist, dating from April 29, 1994 through November 16, 2000, for treatment of "chronic knee pain he sustained due to an injury he sustained [on] active duty." In his report dated April 29, 1994, Dr. Shedd stated that appellant was being treated for degenerative joint disease of his right knee. He noted that appellant complained of pain and stiffness aggravated by bending, stooping and prolonged weight bearing and stated that appellant was restricted from bending, stooping, climbing and standing for a period of more than two hours.[3] Dr. Shedd stated that this restriction would continue until appellant saw his primary care provider. In a May 6, 1997 report, Dr. Shedd stated that appellant's pain was aggravated by prolonged weight bearing and lifting and added that he should not work more than 8 hours in a day or 5 days in 1 week, should not stand for more than three hours at a time and should not lift more than 20 pounds. He concluded that appellant's condition was permanent and stationary. In his remaining reports of record, Dr. Shedd noted appellant's complaints and discussed his treatment but did not offer any additional physical restrictions or discuss the cause of appellant's diagnosed condition.

In addition, appellant submitted progress notes from Dr. R.J. Kleinhans, a treating Board-certified orthopedic surgeon, whom he first saw on October 17, 2002, a few days after his knee gave out causing him to fall. In his report, Dr. Kleinhans noted that appellant had a 20-year history of injury to his right knee and that he had previously sustained a valgus injury and was diagnosed with a torn meniscus but did not have surgery. He noted that x-rays revealed severe osteoarthritis, tricompartment. Dr. Kleinhans discussed his treatment plan but did not offer any opinion as to the cause of appellant's condition. In a follow-up note dated February 24, 2000, Dr. Kleinhans commented on appellant's progress but, again did not discuss the cause of his diagnosed conditions.

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[2] The record does not contain any medical reports from a Dr. Chow or a Dr. Kefoed.

[3] As noted above, appellant was offered light duty in accordance with Dr. Shedd's recommendations.

The record also contains a treatment note and form report from Dr. Napolean G. de Padua, a treating family practitioner, dated February 12 and 21, 2003, respectively. He noted that appellant had a prior history of chronic pain in the right knee secondary to degenerative joint disease and diagnosed a posterior horn tear of the medial maleous, right knee and chondromalacia of the right patella. He indicated, by checking a box marked "yes" and by annotation, that appellant's condition was caused or aggravated by his "working in [the] [employing establishment]." Dr. de Padua did not specify what aspects of appellant's employment contributed to his condition.

Finally, the record contains several reports from Dr. James McLeod Perry, appellant's treating Board-certified orthopedic surgeon. In his initial report of record dated February 14, 2003, Dr. Perry noted appellant's history of service-related injury, reviewed the x-rays and MRI scan results and noted that, on physical examination, appellant exhibited significant atrophy of the right thigh compared to the left, with stable collateral and cruciate ligaments. He stated that his impressions was that appellant was suffering from a degenerative arthritis and may have a degenerative meniscal tear, but did not require immediate surgical intervention. Dr. Perry noted that, although appellant was given restrictions on working long hours, standing and lifting in 1997, it appeared from his work history that appellant's duties at the employing establishment exceeded all of his restrictions, involving 8- to 10-hour shifts, standing to operate a motorized jitney, lifting and transferring 70-pound mailbags while standing and walking as well as bending and occasionally climbing.[4] With respect to the cause of appellant's current condition, Dr. Perry stated:

> "It is certainly apparent that [appellant] had an injury while on active duty for which he obtained a partial medical disability. It is reasonable to assume that his physical activity and being on his feet and lifting, carrying and bending has exacerbated degenerative arthritis occurring from that initial injury.
>
> "I would agree with the recommendations of Dr. Shedd at the Oakland Clinic VA that bending, stooping and prolonged weightbearing should not be done by [appellant] nor should he stand for more than a period of two hours. With any degenerative condition, the more use of the joint, the more likely the situation is to deteriorate. In my opinion his work in the [employing establishment] since 1984 has exacerbated his underlying knee problem from his active duty service."

In follow-up progress notes, Dr. Perry discussed appellant's condition and his plan for treatment, but did not further address the cause of appellant's condition.[5]

LEGAL PRECEDENT -- ISSUE 1

In order to establish that an injury was sustained in the performance of duty, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the

[4] Dr. Perry noted that, while appellant worked as a mail handler from April 1984 to September 1987, he did more lifting, stooping and bending than he did in his later position as a jitney driver.

[5] One of Dr. Perry's treatment notes is dated April 1, 2003 but the remaining notes are undated.

disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[6]

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[7] The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor appellant's belief that the condition was caused or aggravated by employment conditions, is sufficient to establish a causal relationship.[8]

ANALYSIS – ISSUE 1

In this case, it is undisputed that appellant worked as a mail handler equipment operator for the employing establishment and that his duties involved standing and walking for long periods, pushing heavy containers, kneeling, bending, stooping, climbing, driving a forklift and jitney and lifting weights up to 70 pounds. It is also undisputed that appellant sustained a 1979 service-related right knee injury and has recently been diagnosed with a severe degenerative right knee condition. Therefore, the only issue is whether appellant established that his current condition is causally related, either directly or through aggravation, exacerbation or acceleration, to his employment duties.

As discussed above, appellant submitted numerous physician's reports in support of his claim. The vast majority of these reports contain no discussion of the causal relationship, if any, between appellant's diagnosed conditions and his employment duties between 1984 and 2001 or contain only a check mark, without sufficient explanation, to indicate that such a causal relationship existed. The Board has held that a physician's form report which merely checks the box marked "yes" to the inquiry as to whether the condition for which treatment is rendered is causally related to the history of injury as given, is of diminished probative value as it constitutes a conclusion without the benefit of any medical rationale.[9] However, in his report dated February 14, 2003, Dr. Perry noted appellant's history of employment and military service and his history of prior service-related knee problems and stated that appellant's physical activity and being on his feet and lifting, carrying and bending while performing his duties for the employing establishment had exacerbated his underlying degenerative arthritis occurring from his 1979

[6] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams, supra* note 7. Additionally, in order to be considered rationalized the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Id.*

[8] *Charles E. Evans*, 48 ECAB 692 (1997).

[9] *Barbara J. Williams*, 40 ECAB 649 (1989).

service injury. He explained that with any degenerative condition, the more use of the joint, the more likely the situation is to deteriorate. While it is true that, Dr. Perry did not have the benefit of reviewing all of the early medical records associated with appellant's service-related injury, the Board finds that Dr. Perry's opinion, based on the available medical evidence of record, regarding the causal relationship between appellant's current condition and his employment is sufficient to require further development of the case record by the Office.[10]

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[11] Additionally, the Board notes that in this case the record contains no medical opinion contrary to appellant's position. The Board will remand the case for further development of the medical evidence.

On remand the Office should prepare a statement of accepted facts and refer it along with appellant and his medical records for a second opinion examination to obtain a rationalized opinion as to whether appellant's current diagnosed knee conditions are causally related to factors of appellant's federal employment, either directly or through aggravation, precipitation or acceleration. Following such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim.

CONCLUSION

The Board finds that this case is not in posture for decision. Further development of the medical evidence is necessary. In view of the Board's disposition on the merits of the claim, the Board need not address whether the Office properly denied appellant's August 11, 2003 request for reconsideration.

[10] *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978); *see also Donald L. Morris*, 36 ECAB 140 (1984).

[11] *William J. Cantrell*, 34 ECAB 1223 (1983).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 19, July 29 and February 19, 2003, are set aside and the case is remanded for further development consistent with this decision.

Issued: December 15, 2003
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member