

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DWAYNE A. DANDRIDGE and U.S. POSTAL SERVICE,
POST OFFICE, Temple Hills, MD

*Docket No. 02-2232; Submitted on the Record;
Issued June 10, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant's compensation claim was timely filed under the Federal Employees' Compensation Act; and (2) whether appellant has established that he sustained a medical condition in the performance of duty.

On October 15, 2001 appellant, then a 42-year-old letter carrier, filed a claim alleging that the pain in his left knee was the result of his federal employment duties. He asserted that his knees "were not like they were and the pain was from all the walking, standing and climbing stairs." He noted that he was first aware of his disease or illness to his left knee on January 3, 1995. The medical evidence contained notations of a history of bilateral knee pain, appellant's left knee condition and a scheduled left knee arthroscopy. A January 9, 1995 magnetic resonance imaging (MRI) scan of the left knee noted a mild periarticular osteoporosis; significant strain of the anterior cruciate ligament; stress-related changes at the attachments of the posterior cruciate ligament and anterior cruciate ligament in the tibia and the anterior cruciate ligament within the medial portion of the lateral femoral condyle; osteoarthritis changes of the lateral patellofemoral joint; and a suggestion of capsular separation at the anterior margin of the medial meniscus. Appellant underwent left knee arthroscopic surgery in December 2001.

By letter dated January 31, 2002, the Office of Workers' Compensation Programs requested that appellant submit additional information. The Office advised appellant to provide a clear written description, which explained how his work duties caused his claimed left knee condition. Secondly, the Office requested medical documentation to include a physician's medical opinion with rationale as to how and whether any of the identified work functions caused and/or contributed to appellant's claimed left knee condition. Appellant was given 30 days to provide the requested factual and medical information. By letter dated the same day, the Office requested additional information from the employing establishment.

In a January 31, 2002 report of a telephone call, appellant stated that the date he actually became aware that his condition was work related was January 3, 2001, not January 3, 1995 as

stated on his claim form. He noted that the January 3, 1995 date concerned his right knee problem. In a statement dated February 8, 2002, appellant provided additional factual information. Medical evidence was also submitted.

In a letter dated April 11, 2002, the Office wrote the employing establishment inquiring whether it was aware of appellant's condition in October 1995, when he was diagnosed as having osteoarthritis. They advised that appellant was now claiming aggravation of that condition. It was requested that such information be submitted within 30 days. No response was received.

By decision dated May 29, 2002, the Office denied compensation on the grounds that appellant had not filed his claim in a timely manner as required by the Act.¹ The Office noted that claims filed in accordance with the Act must be filed within 3 years of the date of injury, or date of awareness of a relationship between employment and the injury, unless the immediate supervisor had actual knowledge of the injury within 30 days. The Office noted that the evidence of file did not support a finding that the immediate supervisor had actual knowledge of the injury within 30 days of the date of awareness of illness. The Office further noted that although appellant advised on this Form CA-2 that he was first aware of his illness on January 3, 1995 and later advised that that date concerned his right knee, there was no medical evidence of record to support that statement.

The Board finds that appellant's compensation claim was timely filed within the applicable time limitation provisions of the Act.

Section 8122(a) of the Act² states that an original claim for compensation for disability or death must be filed within three years after the injury or death. Section 8122(b)³ provides that, in latent disability cases, the time limitation does not begin to run until the claimant is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship between the employment and the compensable disability. Even if a claim was not timely filed within the three-year period of limitation, it would still be regarded as timely under section 8122(a)(1) if the immediate superior had actual knowledge of the injury within 30 days. The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.

The Board finds appellant's claim filed on October 15, 2001 to be timely filed. Appellant attributes his left knee condition to continuing exposure to work factors as a letter carrier. The Office found that appellant was aware of a relationship between his left knee condition and factors of his employment in January 1995 and, therefore, his claim was untimely. Appellant indicated that although he was aware in January 1995 that he had a mild osteoporosis in his left knee, he did not become aware of the causal connection between his left knee condition and factors of his employment until January 3, 2001. The initial question presented, however, is

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8122(a).

³ *Id.*

whether the claim was filed within three years of the date of “injury,” which is the date of last exposure to the implicated factors in an occupational claim.⁴ Thus, as appellant was still employed when he filed his claim, the date of last exposure would have been the date of his claim October 15, 2001. The October 15, 2001 claim was filed within three years of the date of last exposure to the implicated work conditions and, therefore, it is timely.

The Board further finds that appellant has failed to meet his burden of proof in establishing that he sustained a medical condition in the performance of duty.

An employee seeking benefits under the Act⁵ has the burden of proof to establish the essential elements of his claim.⁶ When an employee claims that 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. Appellant must also establish that such event, incident or exposure caused an injury.⁷

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 rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁸

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

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.6 (March 1993), provides that in occupational disease claims, “time begins to run when the injured employee becomes aware, or reasonably should have been aware, of a possible relationship between the disease or condition and the employment. Where the exposure to possible injurious employment-related conditions continues after this knowledge, the time for filing begins to run on the date of the employee’s last exposure to the implicated conditions.” See also *Garland A. Williams*, 44 ECAB 441 (1993); *Charles B. Fenton*, 36 ECAB 151 (1984).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Margaret A. Donnelley*, 15 ECAB 40 (1963).

⁷ See generally *John J. Carlene*, 41 ECAB 354 (1989); see also 5 U.S.C. § 8101(5) (“injury” defined); 20 C.F.R. § 10.5(q) and (ee) (“occupational disease or illness” and “traumatic injury” defined); see *Margaret A. Donnelley*, *supra* note 6.

⁸ *Bonnie Goodman*, 50 ECAB 139 (1998).

value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁹

In this case, appellant has not submitted medical evidence establishing that the employment factors claimed resulted in or aggravated his osteoarthritis left knee condition.

In its letter of January 31, 2002, the Office requested that appellant provide a comprehensive medical report from his treating physician, which provides the physician's opinion, with medical reasons, on the cause of his left knee condition and whether his physician feels that exposure or incidents in his federal employment contributed to his condition and provide an explanation of how such exposure contributed to the condition. None of the medical reports submitted by appellant contain a medical opinion, with medical rationale, attributing appellant's diagnosed condition to his work factors with a medical explanation of how such work factors caused and/or contributed to or aggravated the claimed knee condition. In a September 5, 2001 report, Dr. America Bush, a Board-certified internist, noted that appellant's left knee began to bother him around July 2001 and appellant was concerned because his left knee felt similar to how his right knee felt prior undergoing arthroscopic evaluation, but failed to offer an opinion regarding causal relation.

As appellant presented no rationalized medical opinion to establish causal relationship between appellant's claimed left knee condition and his employment, appellant has failed to submit the necessary medical evidence to meet his burden of proof and the Office properly denied his claim.

⁹ *Jean Culliton*, 47 ECAB 728 (1996).

The May 29, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed as modified.¹⁰

Dated, Washington, DC
June 10, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹⁰ With his appeal appellant submitted additional 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 submitting new evidence to the Office and requesting reconsideration pursuant to 5 U.S.C. § 8128(a).