

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LONNIE C. SHARP and U.S. POSTAL SERVICE,
POST OFFICE, Little Rock, AR

*Docket No. 03-762; Submitted on the Record;
Issued June 4, 2003*

DECISION and ORDER

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

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

On September 15, 1997 appellant, then a 52-year-old letter carrier, filed a Form CA-1, claim for compensation, alleging that on July 29, 1997 his right knee became swollen and painful while undergoing physical therapy.¹ In a witness statement included on the claim form, Michael Teston, a physical therapist, stated that appellant reported knee pain while doing wall slides and had some swelling afterwards, which limited his ability to continue the therapy. Appellant's supervisor, Mr. Brown, advised that the injury occurred while appellant was undergoing physical therapy for a December 26, 1996 employment injury. On July 7, 2000 appellant filed a Form CA-2, occupational disease claim, alleging that his right knee and hip and left knee had been injured by physical therapy undertaken for an employment-related broken back. He stated that he stopped work on December 26, 1996 when he fell and broke his back while delivering mail. He had returned to limited duty on October 3, 1997.

By letter dated July 22, 2000, the Office informed appellant of the type evidence needed to support his claim. In response, appellant submitted statements, in which he described his job duties and physical complaints. He also submitted physical therapy notes and reports dated July 19 and August 15, 2000 from Dr. Reginald J. Rutherford, who practices neuropathology. In a letter dated September 1, 2000, the employing establishment challenged the claim and advised that on December 26, 1996 appellant sustained an employment-related fracture to L1.

¹ It is unclear whether this claim was submitted to the Office. Appellant's supervisor, Michael R. Brown, signed the claim for on September 18, 1997. The Board notes that appellant has also filed an occupational disease claim alleging that factors of employment caused degenerative disc and joint disease, which was adjudicated by the Office separately. He has filed a separate appeal of an Office January 16, 2003 decision regarding that claim, which has been assigned Docket No. 03-1239 and will be adjudicated separately by the Board.

By decision dated September 26, 2000, the Office denied the claim on the grounds that the medical evidence failed to establish that appellant's diagnosed condition was causally related to the prior injury. On October 7, 2000 appellant requested a hearing and submitted medical reports from Drs. John L. Wilson and Kenneth M. Rosenzweig, who are Board-certified in orthopedic surgery. At the hearing held on August 6, 2001, appellant testified regarding his condition and submitted additional reports from Dr. Rosenzweig. In a decision dated February 28, 2002, an Office hearing representative affirmed the prior decision.

On April 11, 2002 appellant, through his attorney, requested reconsideration and later submitted an August 8, 2002 report from Dr. Rosenzweig. In a decision dated October 16, 2002, the Office denied appellant's reconsideration request.² On November 5, 2002 appellant, again through his attorney, requested reconsideration and submitted an October 10, 2002 report from Dr. Rosenzweig. By decision dated December 27, 2002, the Office denied appellant's reconsideration request, finding the evidence submitted irrelevant. The instant appeal follows.

The Board finds that this case is not in posture for decision.

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim⁴ including the fact that the individual is an "employee of the United States" within the meaning of the Act,⁵ that the claim was timely filed within the applicable time limitation period of the Act,⁶ that an 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.⁷ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

Causal relationship is a medical issue⁹ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician's rationalized medical 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

² The Office initially issued a decision on October 15, 2002 but by letter dated October 15, 2002, the Office advised that the October 16, 2002 decision superseded the October 15, 2002 decision.

³ 5 U.S.C. §§ 8101-8193.

⁴ See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.110.

⁵ See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

⁶ 5 U.S.C. § 8122.

⁷ See *Melinda C. Epperly*, 45 ECAB 196 (1993).

⁸ See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *Mary J. Briggs*, 37 ECAB 578 (1986).

condition and the specific employment factors identified by the claimant.¹⁰ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

Furthermore, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation. However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.¹² This is true even though the employee is found medically disqualified to continue in such employment because of the effect that the employment factors might have on the underlying condition. Under such circumstances, the employee's disqualification for continued employment is due to the underlying condition without any contribution by the employment.¹³

The medical evidence in the instant case relevant to appellant's right knee condition¹⁴ includes an October 23, 2000 report from Dr. Wilson, a Board-certified orthopedic surgeon, who stated that he initially evaluated appellant in 1998, for problems with his right knee "which has been aggravated by long periods of repetitive trauma carrying the mail." Dr. Wilson noted that appellant had to stop physical therapy because of pain in his knee and that he had begun limping. The physician advised that x-rays and a bone scan demonstrated osteoarthritis in both knees.

Dr. Rosenzweig, appellant's attending Board-certified orthopedic surgeon, submitted a report dated April 27, 2001, in which he noted that appellant had worked as a letter carrier for over 30 years and had a "documented complication of his right knee as a result of an injury doing work hardening" during recovery from an employment-related spine fracture. He advised that this permanently aggravated appellant's underlying knee condition, which necessitated that he wear a brace and would prohibit appellant from prolonged standing, walking, stooping, bending, squatting, torquing, twisting and lifting. Dr. Rosenzweig continued to submit reports, in which he advised that appellant was becoming more debilitated due to changes in his neck, back, both hips and both knees and opined that "[t]he issue regarding the right hip, left hip and left knee is as a result of his original documented injury while doing work hardening and is a result of his altered gait due to his right knee."¹⁵ In a July 27, 2001 report, the physician advised that

¹⁰ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, *supra* note 8.

¹¹ *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

¹² *John Watkins*, 47 ECAB 597 (1996).

¹³ *Marion Thornton*, 46 ECAB 597 (1995).

¹⁴ Appellant also submitted a number of physical therapy reports. The reports of a physical therapist, however, do not constitute medical evidence as a physical therapist is not a physician under the Act. *Thomas R. Horsfall*, 48 ECAB 180 (1996). Appellant also submitted reports from Dr. Reginald J. Rutherford, who, however, did not discuss appellant's right knee condition.

¹⁵ Dr. Rosenzweig also discussed appellant's left knee, hip and back conditions and arthritic changes. These, however, are not relevant to the issue in the instant case, *i.e.*, whether appellant's right knee condition is employment related; *see* note 1, *supra*, regarding appellant's additional claim that employment factors caused degenerative disc and joint disease.

magnetic resonance imaging scan of the right knee demonstrated degenerative changes, which were either age related or post-traumatic in nature. The physician concluded that appellant had unrelenting pain due to multiple issues involving his knees, hips, shoulders, carpal tunnel, neck and back and would benefit from surgical intervention in several areas.

Regarding appellant's right knee condition, the Board finds that the reports of Drs. Wilson and Rosenzweig constitute sufficient evidence in support of appellant's claim to require further development by the Office as the physician advised that appellant's work duties as a letter carrier, combined with his previous employment-related injury, aggravated his underlying arthritic knee condition. On October 23, 1998 Dr. Wilson advised that appellant's right knee condition was aggravated by the repetitive trauma of carrying mail. Dr. Rosenzweig noted appellant's work history, previous back injury, the knee injury that occurred during physical therapy and opined that appellant's knee condition was either age related or post-traumatic in nature.

While these reports lack detailed medical rationale sufficient to discharge appellant's burden of proof to establish by the weight of reliable, substantial and probative evidence that his right knee condition is employment related, this does not mean that these reports may be completely disregarded by the Office. It merely means that their probative value is diminished.¹⁶ In the absence of medical evidence to the contrary, the doctors' reports are sufficient to require further development of the record.¹⁷ It is well established that proceedings under the Act are not adversarial in nature,¹⁸ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁹ On remand the Office should initially consolidate all of appellant's claims including the December 26, 1996 employment injury, compile an updated statement of accepted facts and refer appellant, together with the complete case record and questions to be answered, to a Board-certified specialist for a detailed opinion regarding whether appellant's right knee condition was caused or aggravated by factors of employment. After such development as the Office deems necessary, a *de novo* decision shall be issued.

Lastly, in light of the Board's finding regarding the first issue, the question of whether the Office improperly denied merit review is moot.

¹⁶ See *Delores C. Ellyett, supra*, note 8.

¹⁷ *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case for a second opinion evaluation

¹⁸ See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

¹⁹ See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

The decisions of the Office of Workers' Compensation Programs dated December 27, October 16 and February 28, 2002 are hereby vacated and the case is remanded to the Office for further proceedings.

Dated, Washington, DC
June 4, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member