United States Department of Labor
Employees' Compensation Appeals Board

PAUL FOSTER, Appellant	)	
and	)	**Docket No. 04-1943**
	)	**Issued: December 21, 2004**
U.S. POSTAL SERVICE, STERLING HEIGHTS POST OFFICE, Sterling Heights, MI, Employer	)	

Appearances:
Paul Foster, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On July 27, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 15, 2004 which denied his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a traumatic injury while in the performance of duty on May 21, 2004.

FACTUAL HISTORY

On May 26, 2004 appellant, a 35-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 21, 2004 he twisted his left knee while delivering mail. According to the official supervisor's report, appellant was unable to articulate "what he did or when he did it that caused the knee pain. He just said it happened May 21, 2004."

In support of his claim, appellant submitted several documents, including a Form CA-16 dated May 24, 2004; a Form CA-17 duty status report dated May 25, 2004; and an offer of a modified-duty assignment dated May 25, 2004. The Form CA-16, an unsigned attending physician's report, presented a diagnosis of tendinitis and bursitis. The duty status report was signed by Dr. Nehal Tawansy, a Board-certified family practitioner, and indicated that appellant refused to permit examination of his knee due to allegations of extreme pain. According to Charlene Bailey, a nurse practitioner, appellant stated that he twisted his left knee while on his route, and that, when he returned home and was changing into his civilian clothes, his "left knee began to hurt a great deal more." Dr. Tawansy diagnosed a "strained left knee" and recommended a "sit down job" where appellant could elevate his left leg and advised appellant to return to full-time employment on June 1, 2004. A subsequent duty status report dated May 28, 2004 signed by Dr. Tawansy reflected a diagnosis of tendinitis and bursitis. Pursuant to the offer of modified assignment, appellant rejected the city carrier position offered to him which would consist of "sit down work only with ability to elevate [his] leg as necessary."

On June 14, 2004 the Office notified appellant that the evidence submitted was insufficient to establish his claim. He was advised to provide additional documentation, including a firm diagnosis and a physician's opinion as to how his injury resulted in the diagnosed condition. The Office specifically asked appellant to provide a detailed description as to how the injury occurred, including the cause of the injury; statements from any witnesses or other documentation supporting his claim; and the reason he delayed seeking medical treatment.

Appellant submitted physician's notes, signed by Dr. Tawansy, for services rendered on May 24 and 28, 2004. On May 24, 2004 the examination reflected an "assessment" of "acute bursitis or tend[i]nitis" and that appellant received an injection of Toradol and a "work letter" relieving him of his employment responsibilities from May 24 through 31, 2004. Dr. Tawansy related appellant's statement that, after delivering mail all day long and standing and walking for long periods of time, he woke up the next morning with pain in his knee.

In a merit decision dated July 15, 2004, the Office denied appellant's claim, finding that the evidence was insufficient to establish that appellant had sustained an injury on May 21, 2004.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[1] provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[3]

[1] 5 U.S.C. §§ 8101 *et seq.*

[2] 5 U.S.C. § 8102 (a).

[3] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB ___ (Docket No. 04-1257, issued, September 10, 2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

An employee seeking benefits under the Act has the burden of proof to establish 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 an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," namely, 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, and that such event, incident or exposure caused an injury.[5]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant's statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[6]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[7] An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.[8]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[9]

---

[4] *Robert Broome*, 55 ECAB ___ (Docket No. 04-93, issued February 23, 2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Betty J. Smith*, 54 ECAB ___ (Docket No. 02-149, issued October 29, 2002); *see also Tracey P. Spillane*, 54 ECAB ___ (Docket No. 02-2190, issued June 12, 2003). 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(ee).

[6] *See Betty J. Smith*, *supra* note 5.

[7] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[8] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[9] *John W. Montoya*, 54 ECAB ___ (Docket No. 02-2249, issued January 3, 2003).

ANALYSIS

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a traumatic injury to his left knee on May 21, 2004.

Appellant noted on his CA-1 form that the nature of his injury was a twisted left knee, which occurred while he was "on his route." He provided no detailed account of and stated no apparent cause for injury. Appellant presented no evidence regarding the specific mechanism of injury, as required in a claim for traumatic injury, nor did he allege that he experienced a specific event, incident or exposure at a definite time, place and manner.[10] There was no explanation as to the time, place or manner in which appellant twisted his left knee.

Appellant's vague recitation of the facts does not support his allegation that a specific event occurred which caused an injury.[11] There are inconsistencies in the evidence which cast serious doubt on the validity of his claim. Appellant stated that he twisted his knee; but his supervisor noted that appellant could not "say what he did or when he did it." The contemporaneous medical evidence of record does not support appellant's allegation that his condition resulted from a twisted knee. On May 25, 2004 appellant related to a nurse that he twisted his left knee on his route, and that, when he returned home and was changing into his civilian clothes, his "left knee began to hurt a great deal more."[12] However, Dr. Tawansy's May 25, 2004 report reflects that, after delivering mail all day long and standing and walking for long periods of time, appellant woke up the next morning with pain in his knee. The physician did not obtain a history of appellant twisting his knee. Appellant has stated at least four versions of the facts surrounding his alleged injury but has not presented any evidence, such as witness statements, to substantiate twisting his knee on May 21, 2004, as alleged. Appellant's representation that his knee "hurt" does not describe the occurrence of an injury.

In *Tracey P. Spillane*,[13] an employee filed a claim alleging that she sustained an allergic reaction at work. However, she did not clearly identify the aspect of her employment which she believed caused the claimed condition, but only made vague references to "possibly having a reaction to magazines or latex gloves." The Board held that she did not adequately specify the employment factors which caused her need for medical treatment, nor did she specify details such as the extent and duration of exposure to any given employment factors. The medical record reflected that the employee did not clearly report to her physicians that she felt her claimed condition was due to a specific and identifiable employment factor. In this case,

[10] *See Betty J. Smith*, *supra* note 5; *see also Tracey P. Spillane*, *supra* note 5.

[11] *See Dennis M. Mascarena*, *supra* note 8.

[12] A nurse practitioner is not a "physician" pursuant to the Act. Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist, and subject to regulation by the Secretary." *See Merton J. Sills*, 39 ECAB 572, 576 (1988). However, the contents of the report are relevant as they relate to the allegations and facts of the case.

[13] *See Tracey P. Spillane*, *supra* note 5.

appellant's allegations are vague and do not relate with specificity the cause of the injury or how he twisted his knee while performing his duties on May 21, 2004. He did not address the nature of the employment activity in which he was engaged at the time of the alleged injury; or the immediate consequence of the injury (*e.g.*, whether he fell, stumbled or had to sit down). Appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty, and it is not necessary to discuss the probative value of the medical reports.[14]

The Board finds that appellant has failed to establish the fact of injury: he did not submit sufficient evidence to establish that he actually experienced an employment incident at the time, place and in the manner alleged or that the alleged.

CONCLUSION

Appellant has not met his burden of proof to establish that he sustained a traumatic injury to his left knee in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[14] *Id*.