

**United States Department of Labor
Employees' Compensation Appeals Board**

STEPHEN J. ABERNATHY, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Belleville, IL, Employer**

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**Docket No. 04-1992
Issued: December 29, 2004**

Appearances:
Stephen J. Abernathy, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On August 9, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated June 10, 2004, finding that appellant's request for reconsideration was insufficient to warrant merit review of an October 7, 2003 decision denying his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established a knee injury causally related to factors of his federal employment, and (2) whether the Office properly denied appellant's request for reconsideration without merit review of the claim.

FACTUAL HISTORY

On July 9, 2003 appellant, then a 45-year-old carrier, filed an occupational disease claim for compensation (Form CA-2) alleging that he sustained knee injuries as a result of his federal employment. He indicated that he had degenerative arthritis in both knees, and had lost 50

percent of the cartilage in the left knee. Appellant stated that his job involved walking on hills, steps and driveways, as well as moving in and out of a vehicle. According to appellant, he became aware of the condition on October 1, 2002 and was aware of causal relationship with employment as of April 2003. The reverse of the claim form reported that appellant was off work from May 21 to July 3, 2003.

In an accompanying statement, appellant stated that he believed he had undergone five prior knee surgeries, and each time he told the physician that the problem was due to walking up and down streets with broken, uneven sidewalks an average of six hours a day. He stated that he had both torn cartilage and torn tendons.

By letter dated July 29, 2003, the Office requested that appellant submit additional evidence regarding his claim, including a comprehensive narrative medical report. Appellant submitted an August 4, 2003 report from Dr. A.J. Garces, a family practitioner, who stated that appellant was treated for left knee arthritis. Dr. Garces reported that appellant had left knee pain, had lost strength in the knee and was having a difficult time walking, especially if he had to walk more than six hours at work. In a report dated August 13, 2003, Dr. Rick Wright, an orthopedic surgeon, indicated that appellant underwent a left knee meniscectomy on May 20, 2003. Dr. Wright stated that work activities, including walking, standing and weight bearing, are a potential exacerbating element with regard to his knee pain.

By decision dated October 7, 2003, the Office denied appellant's claim for compensation benefits. The Office found that the medical evidence was not sufficient to establish causal relationship between a medical condition and the employment factors.

Appellant requested reconsideration in a letter dated March 4, 2004. He stated that he went back to work last fall and worked his route with constant left knee pain. According to appellant, on December 26, 2003 he slipped on a wet rocky area, causing pain to both knees. Appellant indicated that he had torn cartilage in both knees, and was scheduled for right knee surgery.

In a decision dated June 10, 2004, the Office denied the request for reconsideration, without reviewing the merits of the underlying claim. The Office found that the reconsideration request was not sufficient to warrant a merit review of the occupational knee claim.

LEGAL PRECEDENT -- ISSUE 1

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹ The evidence

¹ *Victor J. Woodhams*, 41 ECAB 345 (1989).

required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and his federal employment.² Neither the fact that the condition became manifest during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by his federal employment, is sufficient to establish causal relation.³

ANALYSIS -- ISSUE 1

The medical evidence in this case provided a diagnosis of left knee arthritis, as well as a torn meniscus in the left knee with surgery on May 20, 2003. The identified employment factors were job duties that included walking on uneven and elevated surfaces, as well as getting in and out of vehicles. To meet appellant's burden of proof, a physician must provide a reasoned medical opinion on causal relationship between a diagnosed condition and the identified employment factors. In this case, Dr. Garces stated only that appellant was having a difficult time walking, without discussing causal relationship between a left knee arthritis and work factors.

Dr. Wright stated that appellant had a May 20, 2003 meniscectomy and that work activities are a potentially exacerbating element for his knee pain. The physician appeared to be referring to the possibility of work activities aggravating appellant's current condition.⁴ If Dr. Wright intended to opine that work activities did aggravate a knee condition, he did not provide any explanation or medical rationale. The issue is whether the work factors caused or contributed to a diagnosed knee condition. Dr. Wright did not provide a reasoned opinion, based on a complete background, on causal relationship between a torn meniscus or other diagnosed knee condition and the employment factors. It is appellant's burden of proof to submit the necessary medical evidence to establish his claim. The Board finds that appellant did not meet his burden of proof in this case.

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."⁵

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or

² See *Walter D. Morehead*, 31 ECAB 188 (1979).

³ *Manuel Garcia*, 37 ECAB 767 (1986).

⁴ The possibility of a future injury does not constitute an injury under Act and therefore no compensation can be paid for such a possibility. *Gaetan F. Valenza*, 39 ECAB 1349, 1356 (1988).

⁵ 20 C.F.R. § 10.605 (1999).

interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁶

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁷

ANALYSIS -- ISSUE 2

Appellant did not submit any additional medical evidence with respect to his claim. As noted above, the issue is a medical issue regarding causal relationship between a diagnosed knee condition and the identified employment factors. Appellant discussed a December 26, 2003 incident, but if he is alleging an injury from a specific employment incident on that date, that would be a new claim. He did not submit new and relevant evidence, show that the Office erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument. The Board finds that appellant did not meet any of the requirements of section 10.606. Accordingly, the Office properly determined that appellant's request for reconsideration did not warrant merit review of the claim.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish a knee injury casually related to the identified employment factors. The Board further finds that appellant did not meet the requirements of 20 C.F.R. § 10.606 and the Office properly denied the request for reconsideration without merit review of the claim.

⁶ *Id.* at § 10.606.

⁷ *Id.* at § 10.608.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 10, 2004 and October 7, 2003 are affirmed.

Issued: December 29, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member