United States Department of Labor
Employees' Compensation Appeals Board

WILLIAM E. WILSON, JR., Appellant	)	
and	)	**Docket No. 04-1551**
	)	**Issued: November 4, 2004**
U.S. POSTAL SERVICE, SHARED SERVICE CENTER, Pittsburgh, PA, Employer	)	

Appearances:
Daniel R. Bieger, Esq., for the appellant
Office of 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 May 21, 2004 appellant, through his attorney, filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated August 28, 2003 and May 13, 2004 denying 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 June 5, 2003.

FACTUAL HISTORY

On June 5, 2003 appellant, a 45-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained an "acute knee sprain" while walking his regular route. He submitted no documentation with his claim.[1]

On June 25, 2003 the Office notified appellant that the evidence submitted was insufficient and advised him to provide additional documentation, including a diagnosis and a physician's opinion as to how his injury resulted in the diagnosed condition. The Office specifically asked him to provide a detailed description as to how the injury occurred, including the cause of the injury and statements from any witnesses.

In response to the Office's request, appellant submitted two unsigned radiology reports dated June 9 and 10, 2003, reflecting hypertrophic degenerative osteoarthritis of the right knee.

By decision dated July 28, 2003, the Office denied appellant's claim,[2] stating that the evidence was insufficient to establish that he had sustained an injury under the Federal Employees' Compensation Act.[3]

By letter dated August 19, 2003, appellant requested reconsideration of the Office's decision and submitted additional evidence, including his answers to questions posed by the Office; an attending physician's report dated July 17, 2003; a return to work medical certificate dated July 7, 2003, signed by Dr. Wallace L. Huff, a Board-certified orthopedic surgeon; and a light-duty medical certificate dated July 8, 2003.

By decision dated August 28, 2003, the Office denied modification of its prior decision of July 28, 2003, finding that appellant failed to provide sufficient evidence to establish that he sustained a work-related injury on June 5, 2003 that was causally related to his diagnosed condition. The Office specified that no reasoned medical opinion was provided which linked the alleged June 5, 2003 injury to the claimed condition.

On January 24, 2004 appellant again requested reconsideration and submitted additional evidence, including medical reports, unsigned treatment notes and an unsigned letter from Dr. Huff dated January 5, 2004, in which he provided a diagnosis of "medial compartment arthritis of the right knee" and opined, within a reasonable degree of medical certainty, appellant's condition was not the result of one injury, but rather that his activities as a postal worker over the last 15 years had accelerated and exacerbated the development of his condition.

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[1] However, the record reflects that on June 20, 2003 several documents relating to two other individuals were erroneously placed in appellant's file: several prescriptions were received for a William O. Willis of Charleston, West Virginia; and an employee narrative dated June 10, 2003, a supervisor's narrative dated June 12, 2003 and a medical report dated June 12, 2003 were received for William D. Wilson of Canton, Ohio.

[2] The Office's decision incorrectly stated that appellant had submitted copies of prescriptions, his own statement and his supervisor's statement. In fact, those documents pertained to the two individuals referenced above, not appellant.

[3] 5 U.S.C. §§ 8101-8193.

Appellant also submitted a letter from Dr. Rebecca Wiengart, a Board-certified internist, dated January 26, 2004, which stated that he had a history of degenerative disc disease as well as bilateral degenerative joint disease and that the condition was exacerbated by his repetitive work as a mail carrier. A January 5, 2004 letter from William Clever, a family nurse practitioner, indicated that appellant was evaluated for knee pain following an "on-the-job accident" on June 5, 2003 and that in his opinion, appellant's medial meniscus tear was in part caused by "requirements of his employment such as twisting, standing for prolonged periods of time, lifting and delivery of mail."

In a merit decision dated May 13, 2004, the Office found that, although the medical reports were indeed rationalized medical evidence under the Act, they were insufficient to remedy the primary defect of appellant's claim, that he had presented no evidence regarding the specific mechanism of injury, as required in a claim for traumatic injury. Accordingly, the Office found that the evidence was insufficient to warrant modification of its decision of August 28, 2003.

LEGAL PRECEDENT

The Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[4] 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."[5]

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury;" 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.[6]

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

[4] 5 U.S.C. § 8102(a).

[5] 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).

[6] *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). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

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.[7]

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.[8] 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.[9]

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.[10]

ANALYSIS

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a traumatic injury to his right knee on June 5, 2003.

The Office found in its original decision of July 28, 2003 that appellant had failed to establish the events of June 5, 2003 and that he had submitted no medical evidence which provided a diagnosis that could be connected to the claimed event. Appellant claimed in his CA-1 form that the nature of his injury was "acute knee sprain right knee," which occurred while he was "walking in the 200 block of Oak Street." He mentioned no detailed account of and stated no apparent cause for the injury. The only medical reports submitted prior to the Office's initial decision were two unsigned radiology reports dated June 9 and 10, 2003, reflecting hypertrophic degenerative osteoarthritis of the right knee. No evidence whatsoever was presented of a causal relationship between the alleged injury and a diagnosed condition. In his August 5, 2003 responses to questions posed by the Office, appellant elaborate only slightly, stating that he was delivering mail when his "knee made a popping sound when I pivoted and knee began hurting." His vague recitation of the facts as he perceived them does not support his allegation that a specific event occurred which caused an injury. Appellant's representation that he heard popping and that his knee hurt does not describe the occurrence of an injury, but rather describes the result of an injury, which could have occurred at any time or over a period of time.

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[7] *Id*. *Betty J. Smith.*

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

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

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

In *Tracey P. Spillane*,[11] an employee filed a claim alleging that she sustained an allergic reaction at work. However, because she did not clearly identify the aspect of her employment which she believed caused her to suffer the claimed condition, but only made vague references to "possibly having a reaction to magazines or latex gloves," the Board held that she had not adequately specified the employment factors which she felt caused her need for medical treatment, nor did she specify such details as to the extent and duration of exposure to any given employment factors. Medical reports reflected that the employee had not clearly reported to her physicians that she felt her claimed condition was due to a specific and identifiable employment factor. Similarly, in the instant case, appellant's allegations are vague and do not relate with specificity the cause of the injury (*i.e.*, the fact that the sidewalk was uneven or that he stepped in a hole); the nature of the employment activity in which he was engaged at the time of the alleged injury; or the exact and immediate consequence of the injury (*i.e.*, the fact that he fell, stumbled or had to sit down).[12] Therefore, 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.[13]

The Board notes that the medical evidence submitted does not assist appellant in establishing that he sustained a traumatic injury at the time and in the manner alleged. In fact, the medical evidence presented establishes that appellant's injury was not caused by the alleged June 5, 2003 incident or any other specific incident. In his letter dated January 5, 2004, Dr. Huff, provided a diagnosis of "medial compartment arthritis of the right knee" and opined, within a reasonable degree of medical certainty, that appellant's condition was not the result of one injury, but rather that his activities as a postal worker over the last 15 years have accelerated and exacerbated the development of his condition. His letter was unsigned and, therefore, lacks probative value; however, even if it were signed and had probative value, it would, ironically work against appellant's claim. A letter from Dr. Rebecca Wiengart, a Board-certified internist, dated January 26, 2004 stated that appellant had a history of degenerative disc disease as well as bilateral degenerative joint disease and that the condition was exacerbated by his repetitive work as a mail carrier.[14] There is no medical evidence of record which explains the physiological process by which the alleged incident on June 5, 2003 would have caused the diagnosed condition or even supports appellant's claim that a specific injury occurred on June 5, 2003.

[11] *Tracey P. Spillane*, 54 ECAB ___ (Docket No. 02-2190, issued June 12, 2003).

[12] The Office's May 13, 2004 decision points to alleged inconsistencies in the evidence, referring to a personal statement in which appellant referred to an injury of his left knee. However, as noted in the factual history above, the document to which the Office erroneously referred pertained to William D. Wilson of Canton, Ohio.

[13] *Tracey P. Spillane, supra* note 12.

[14] A January 5, 2004 letter from William Clever, a family nurse practitioner, indicates that appellant was evaluated for knee pain following an "on-the-job accident" on June 5, 2003 and that, in his opinion, appellant's medial meniscus tear was in part caused by "requirements of his employment such as twisting, standing for prolonged periods of time, lifting and delivery of mail." Though consistent with the opinions of Dr. Weingart and Dr. Huff, the opinion of a nurse practioner is of no probative value. *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

Thus, appellant has failed to establish 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 incident caused his condition.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2004, August 28 and July 28, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 4, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member