United States Department of Labor
Employees' Compensation Appeals Board

MIKEL G. DAY, Appellant	)	
and	)	**Docket No. 04-1754**
	)	**Issued: October 27, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Milwaukee, WI, Employer	)	

Appearances:
Mikel G. Day, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On July 6, 2004 appellant filed a timely appeal of a March 30, 2004 decision of the Office of Workers' Compensation Programs' hearing representative, finding that he failed to establish an injury while in the performance of duty. 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 has established that he sustained an injury while in the performance of duty.

FACTUAL HISTORY

On August 4, 2003 appellant, then a 38-year-old distribution/sales service associate, filed an occupational disease claim alleging that the torn cartilage in his left knee was caused by factors of his employment. Appellant stated that he felt pain and heard something pop while squatting to pick up a tub. He delayed in filing the claim after he realized his condition and its relationship to his employment due to "unknown specific date of actual injury/aggravation."

By letter dated September 26, 2003, the Office acknowledged receipt of the occupational disease claim and advised appellant that his claim form was insufficient to establish his claim. The Office advised him to submit factual evidence such as, the employment-related activities that caused his condition and medical evidence within 30 days to establish his claim. Appellant did not respond within the allotted time period.

By decision dated October 28, 2003, the Office found the evidence of record sufficient to establish the claimed exposure occurred, but insufficient to establish that appellant sustained an injury causally related to the work exposure. On November 26, 2003 appellant requested a review of the written record by an Office hearing representative. He submitted several medical records from Dr. Anthony A. Ferguson, a Board-certified orthopedic surgeon.

Dr. Ferguson's July 30, 2003 treatment notes provided a history that three months prior, appellant was squatting at work and felt a sharp pain in both the medial and lateral sides of his left knee when he stood up. He noted a history of appellant's medical treatment for this injury and a previous left ankle injury and his social background. Dr. Ferguson further noted his findings on physical and x-ray examination and diagnosed internal derangement especially, with a "possible" medial meniscal tear. He stated that based on appellant's subtle abnormalities on plain film, he "possibly" may have sustained a discoid lateral meniscus. Dr. Ferguson ordered a magnetic resonance imaging (MRI) scan to confirm this diagnosis. He concluded that based on the information provided, appellant had no symptoms before his work injury and this injury would "probably" fall under a workers' compensation claim.

In a July 30, 2003 letter, Dr. Ferguson advised Dr. Michael Schatzman, a Board-certified internist, that appellant hurt his left knee while rising from a squatting position at work. He further advised Dr. Schatzman that he scheduled an MRI scan due to concern about the status of appellant's meniscal cartilages especially, the medial meniscus.

In August 4, 2003 treatment notes, Dr. Ferguson reviewed the July 31, 2003 MRI scan results. He opined that appellant had significant internal derangement of the knee including, medial and lateral meniscus tears and some mild medial femoral condylar edema. Dr. Ferguson noted that appellant related that he had no symptoms before the work event and opined that appellant sustained a workers' compensation injury based on the information provided to him. Dr. Ferguson indicated that appellant wished to proceed with left knee anthroscopy with medial and lateral meniscectomies after he discussed the risks associated with the surgery and what to expect regarding postoperative pain, pain management, rehabilitation and possible medical complications.

In an August 4, 2003 letter, Dr. Ferguson advised Dr. Schatzman that an MRI scan confirmed that appellant had internal derangement and medial and lateral meniscal tears. He noted that appellant planned to proceed with surgery.

Dr. Ferguson's August 26, 2003 operative report described appellant's left knee surgery and revealed preoperative and postoperative diagnoses of left knee medial and lateral meniscus tears.

Dr. Ferguson's September 5, 2003 treatment notes indicated that appellant was being seen for his first postoperative visit following left knee surgery. He noted that appellant was doing well and that a lower extremity ultrasound was scheduled to rule out deep venous thrombosis.

Dr. Ferguson's undated disability certificate stated that appellant was treated on September 5, 2003 and that he could return to work in one month. In another undated disability certificate, Dr. Ferguson indicated that appellant was treated on September 26, 2003 and that he could return to sedentary work on September 29, 2003 with certain physical restrictions. In yet another undated disability certificate, Dr. Ferguson noted that appellant was examined on October 24, 2003 and that he could return to work on October 25, 2003 with his current restrictions.

In his September 18, 2003 report, Dr. Ferguson agreed with appellant's physical therapist's plan to rehabilitate his left knee meniscus tears.

Dr. Ferguson's September 26, 2003 treatment notes revealed that appellant continued to progress well. He stated that appellant could return to sedentary work only with certain physical restrictions. Dr. Ferguson's October 24, 2003 treatment notes indicated that he had persistent discomfort and inflammation in his left knee and that he continued to need physical therapy. Dr. Ferguson stated that appellant could continue to work under his present work restrictions.

Appellant also submitted Dr. Schatzman's July 23, 2003 report, which provided a history that he had been undergoing physical therapy for the last two months for left patellofemoral syndrome. Dr. Schatzman provided his findings on physical examination and opined that appellant had left knee pain that was "likely" due to patellofemoral syndrome and that, although he had received physical therapy for a couple of months, his condition was slightly worse. Dr. Schatzman recommended that appellant see an orthopedic physician.

A July 31, 2003 report from a physician whose signature is illegible indicated that appellant had left knee pain and that an MRI scan was scheduled to rule out internal derangement. The report also indicated that appellant had tears of the posterior horn of the lateral and medial meniscus and marrow edema in the medial femoral condyle at the medial collateral ligamentous attachment. The medial collateral ligament, lateral collateral ligament and cruciates were reported to be fine while there was mild effusion.

A July 31, 2003 MRI scan report from Dr. Murray S. Donovan, a Board-certified radiologist, revealed that the posterior horn of the lateral meniscus had a complex tear, which may extend into the anterior and periphery and truncation in the medial aspect of the posterior horn medial meniscus with a probable horizontal posterior tear. Dr. Donovan found that appellant's cruciate and collateral ligaments were intact but, there was mild marrow edema appreciated in the medial femoral condyle proximally at approximately the medial collateral ligamentous attachment. He noted that there was no other marrow edema, no evidence of Baker's cyst, mild to moderate volume effusion and menisical cysts associated with the anterior horn and lateral meniscus.

By decision dated March 30, 2004, the hearing representative affirmed the October 28, 2003 decision, finding that appellant did not submit a personal statement identifying specific factors and, thus, he failed to establish "fact of injury -- occupational disease."

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

> "The term 'occupational disease' are defined by the Office's regulations. Section 10.5(q) defines the term 'occupational disease' or 'illness' as '[a] condition produced by the work environment over a period longer than a "single workday or shift.'"[4]

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. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. 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.[5]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

[4] *Id.* at 10.5(q).

[5] *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

ANALYSIS

In developing appellant's claim for an occupational disease, the Office requested that he submit a personal statement identifying specific factors which he attributed to his left knee injury. The Office also requested that appellant submit medical evidence describing how the implicated employment factors caused his knee injury. He did not submit the requisite factual evidence. Although appellant submitted medical evidence, the Board finds it insufficient to establish that the claimed left knee injury resulted from his employment factors.

Appellant submitted several medical treatment notes, letters and reports from Dr. Ferguson. In a treatment note by Dr. Ferguson dated July 30, 2003, he described knee pain experienced by appellant when rising from a squatting position at work. He also stated that appellant had internal derangement with a "possible" medial meniscal tear and discoid lateral meniscus and opined that since appellant had no symptoms before his work injury, his injury would "probably" fall under a workers' compensation claim is insufficient to satisfy appellant's burden. The Board finds that Dr. Ferguson's description does not attribute appellant's left knee injury to an occupational disease as occurring over more than one workday or shift. Additionally, his diagnosis is equivocal with regard to the medial meniscal tear and discoid lateral meniscus.[6] Further, when a physician concludes that a condition is causally related to an employment because the employee was asymptomatic before the employment injury, the opinion is insufficient without supporting medical rationale to establish causal relationship.[7] Moreover, the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty; but, such opinion should not be speculative or equivocal.[8] As stated above, medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relation.[9] The Board finds that Dr. Ferguson did not provide any medical rationale explaining how appellant's left knee conditions were caused by factors of his employment.

Similarly, Dr. Ferguson's August 4, 2003 treatment notes, in which he stated that appellant had significant internal derangement of the knee, medial and lateral meniscus tears and mild medial femoral condylar edema, reiterated that appellant had no symptoms before the work incident and opined that he sustained a workers' compensation injury based on the information provided to him failed to provide any medical rationale to support his opinion on causal relation.

In his July 30 and August 4, 2003 letters to Dr. Schatzman, Dr. Ferguson indicated that an MRI scan confirmed the diagnosis of internal derangement and medial and lateral meniscal tears in the left knee. In the July 30, 2003 letter, Dr. Ferguson described that appellant injured his left knee while rising from a squatting position, which the Board finds is not representative of an occupational disease. Moreover, in this letter, as well as the August 4, 2003 letter, Dr. Ferguson failed to address causal relationship.

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[6] *Linda I. Sprague*, 48 ECAB 386 (1997).

[7] *Thomas D. Petrylak*, 39 ECAB 276 (1987).

[8] *Samuel Senkow*, 50 ECAB 370 (1999).

[9] *Id*.

In his August 26, 2003 operative report, Dr. Ferguson provided preoperative and postoperative diagnoses of left knee medial and lateral meniscal tears. He failed to discuss whether the diagnosed conditions were caused by factors of appellant's employment in his letters and report.

Dr. Ferguson's September 5, 2003 treatment notes indicating that a lower extremity ultrasound was necessary to rule out venous thrombosis failed to provide a diagnosis and to discuss whether the diagnosed condition was caused by factors of appellant's employment. In addition, his disability certificates, which revealed that appellant could perform sedentary work with certain physical restrictions, failed to provide a diagnosis or discuss whether the diagnosed condition was caused by factors of appellant's employment.[10]

In his September 18, 2003 report, Dr. Ferguson agreed with the physical therapist's treatment plan for appellant's left knee meniscus tears, but he did not address whether appellant's conditions were caused by factors of his employment.

Dr. Schatzman's July 23, 2003 report in which he opined that appellant's left knee pain was "likely" due to patellofemoral syndrome and that his condition had worsened despite physical therapy is equivocal regarding appellant's diagnosis.[11]

The July 31, 2003 report from an individual whose signature is illegible contained a diagnosis of tears of the posterior horn of the lateral and medial meniscus, marrow edema in the medial femoral condyle at the medial collateral ligament and mild effusion. As the identity of the individual is unknown, the Board finds that this report does not constitute medical evidence.[12] Dr. Donovan's July 31, 2003 MRI scan report revealed that the posterior horn of the lateral meniscus had a complex tear, which may extend into the anterior and periphery and truncation in the medial aspect of the posterior horn medial meniscus with a probable horizontal posterior tear and truncation in the medial aspect of the posterior horn medial meniscus with a probable horizontal posterior tear in this component of the meniscus. In addition, Dr. Donovan reported that appellant's cruciate and collateral ligaments were intact but, there was mild marrow edema appreciated in the medial femoral condyle proximally at approximately the medial collateral ligamentous attachment. The July 31, 2003 report and Dr. Donovan's report failed to address whether appellant's left knee conditions were caused by factors of his employment.

[10] *Daniel Deparini*, 44 ECAB 657, 659 (1993).

[11] *Linda I. Sprague, supra* note 6.

[12] *Merton J. Sills*, 39 ECAB 572 (1988).

Although the Office advised appellant of the type of medical evidence needed to establish his occupational disease claim, he failed to submit medical evidence responsive to the request. Appellant has not established that his left knee condition was caused by factors of his employment.[13]

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 27, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[13] Section 10.5(ee) of the Office's regulation defines the term "traumatic injury" as "A condition of the body caused by a specific event or incident or series of "events or incidents, within a single workday or shift." By alleging that he injured his left knee while rising from a squatting position in picking up a tub, on or about July 1, 2003 the Board notes that it appears that appellant may be claiming a traumatic injury. Upon return of the case record, appellant should file a Form CA-1 with the Office if he wishes to pursue this.