United States Department of Labor
Employees' Compensation Appeals Board

JENNIFER A. SULLIVAN, Appellant	)	
and	)	**Docket No. 05-248**
	)	**Issued: April 1, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Spring Hill, FL, Employer	)	

Appearances:
Jennifer A. Sullivan, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 2, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 3, 2004 merit decision, denying her claim that she sustained an employment-related left knee injury on December 21, 2002. She also filed a timely appeal from the Office's June 8, 2004 nonmerit decision, denying her request for reconsideration of her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over these merit and nonmerit decisions.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a left knee injury in the performance of duty on December 21, 2002; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On January 7, 2003 appellant, then a 49-year-old mail carrier, filed a traumatic injury claim alleging that she sustained a left knee injury at work on December 21, 2002. Regarding the cause of the injury, she stated that she used her left foot to drive and that as she reached across her delivery vehicle her left knee "popped." Appellant did not stop work.

Appellant submitted medical evidence showing that she underwent left knee surgery in 1989 and 1990, including reconstruction of her anterior cruciate ligament.

By decision dated March 5, 2003, the Office denied appellant's claim on the grounds that she did not submit sufficient factual and medical evidence to establish that she sustained a left knee injury in the performance of duty on December 21, 2002.

In mid-March 2003 appellant submitted a statement in which she explained that on December 21, 2002 she was sitting on the passenger side of her vehicle with her left leg extended to operate the pedals and experienced a pop in her left knee when she pressed the brake. She also submitted an undated form report of a physician's assistant who indicated that she was first treated on January 17, 2003.

By decision dated May 28, 2003, the Office affirmed the March 5, 2003 decision, finding that it had accepted the occurrence of the December 21, 2002 employment incident as alleged by appellant. It found that she did not submit sufficient medical evidence to establish that she sustained an injury as a result of the incident.

Appellant submitted an August 12, 2003 form report from Dr. Jose G. Gomez, an attending Board-certified orthopedic surgeon, who diagnosed a possible degenerative meniscal tear of the left knee. He checked a "yes" box indicating that the condition was caused or aggravated by an employment activity and indicated that he first treated appellant on July 23, 2003.

By decision dated September 9, 2003, the Office affirmed the May 28, 2003 decision.

In a report dated July 23, 2003, Dr. Gomez stated that appellant reported her left knee symptoms began on December 21, 2002. He diagnosed tri-compartmental osteoarthritis of the left knee. In a report dated November 25, 2003, Dr. Gomez stated that diagnostic testing showed that her left knee exhibited a tear of the posterior horns of the medial and lateral menisci. He noted that appellant reported her symptoms started a year prior when she pressed the pedal of her vehicle at work and heard a loud pop in her left knee. Dr. Gomez stated, "I have explained to her that in my opinion, this is an aggravation of possibly the post-traumatic arthritis along with possible acute tearing of the meniscus at that particular time; however, we know that she does have all these chronic changes in the knee."

By decision dated March 3, 2004, the Office affirmed the September 9, 2003 decision.

Appellant requested reconsideration of her claim and submitted an undated notation in which Dr. Gomez stated, "Yes, patient had no symptoms before December 21, 2002," in response to the question of whether the torn meniscus in her left knee was due to the

December 21, 2002 employment incident. She also submitted a May 3, 2002 notation in which Dr. John P. Turi, an attending chiropractor, stated, "It is possible from what the patient described," in response to the same question.

By decision dated June 8, 2004, the Office denied appellant's request for further merit review of her claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of 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 and specific condition for which compensation is claimed is 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]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.[4] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[5] The term injury as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[6]

ANALYSIS -- ISSUE 1

The Office accepted the occurrence of the December 21, 2002 employment incident as alleged, but found that appellant did not submit sufficient medical evidence to establish that she sustained a left knee injury in the performance of duty on December 21, 2002.

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[1] 5 U.S.C. § 8101 *et seq.*

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

[3] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

[4] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[5] *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[6] *Elaine Pendleton*, *supra* note 3; 20 C.F.R. § 10.5(a)(14).

Appellant submitted an August 12, 2003 form report in which Dr. Gomez, an attending Board-certified orthopedic surgeon, diagnosed a possible degenerative meniscal tear of the left knee and checked a "yes" box indicating that the condition was caused or aggravated by an employment activity. However, Dr. Gomez did not indicate what employment activity he felt caused appellant's condition. In a report dated November 25, 2003, Dr. Gomez noted that appellant reported her symptoms started a year prior when she pressed the pedal of her vehicle at work and heard a loud pop in her left knee. Dr. Gomez stated, "I have explained to her that in my opinion, this is an aggravation of possibly the post-traumatic arthritis along with possible acute tearing of the meniscus at that particular time; however, we know that she does have all these chronic changes in the knee." This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Gomez did not provide adequate medical rationale in support of his conclusion on causal relationship.[7] He did not describe the December 21, 2002 employment incident in any detail or explain the mechanism through which it could have caused the observed condition of appellant's left knee. In fact, Dr. Gomez' opinion suggested that appellant's left knee problems were related to the natural progression of her degenerative disease and Dr. Gomez did not explain why her condition was not due to this nonwork-related condition.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[8] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.[9] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[10] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[11]

ANALYSIS -- ISSUE 2

In support of her reconsideration request, appellant submitted an undated notation in which Dr. Gomez stated, "Yes, patient had no symptoms before December 21, 2002," in response to the question of whether the torn meniscus in her left knee was due to the December 21, 2002 employment incident. However, this note is similar to previously submitted

[7] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[8] Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[9] 20 C.F.R. §§ 10.606(b)(2).

[10] 20 C.F.R. § 10.607(a).

[11] 20 C.F.R. § 10.608(b).

reports of Dr. Gomez which contained an unrationalized opinion that appellant sustained an employment injury on December 21, 2002. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[12] Appellant also submitted a May 3, 2002 notation in which Dr. Turi, an attending chiropractor, stated, "It is possible from what the patient described," in response to the same question. However, this evidence would not be relevant because, under section 8101(2) of the Act, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.[13] There is no indication that Dr. Turi treated a spinal subluxation as demonstrated by x-ray to exist and therefore this nonmedical document would have no bearing of the main issue of the present case which is medical in nature. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.[14]

Appellant has not established that the Office improperly refused to reopen her claim for a review on the merits of its March 3, 2004 decision under section 8128(a) of the Act, because she did not to show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a left knee injury in the performance of duty on December 21, 2002. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

[12] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

[13] 5 U.S.C. § 8101(2). *See Jack B. Wood*, 40 ECAB 95, 109 (1988).

[14] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' June 8 and March 3, 2004 decisions are affirmed.

Issued: April 1, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member