United States Department of Labor
Employees' Compensation Appeals Board

KEVIN A. FITZSIMONS, Appellant	)	
	)	**Docket No. 05-1586**
and	)	**Issued: December 1, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Pittsburgh, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 25, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 23, 2005 which denied modification of a prior decision finding that appellant did not sustain a left knee injury 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 the case.

ISSUE

The issue on appeal is whether appellant has met his burden of proof in establishing that he sustained a left knee injury in the performance of duty.

FACTUAL HISTORY

On February 17, 2004 appellant, then a 43-year-old mail carrier, filed a claim for traumatic injury alleging that on February 12, 2004 he dismounted his mail truck and placed his full weight on his left knee and heard a "pop." Appellant stopped work on that day and returned to a limited-duty position on February 17, 2004. His supervisor noted that appellant did not

report the injury until February 13, 2004. He further noted that appellant complained that his knee bothered him for several weeks prior to the injury.

Appellant submitted a note from a physician's assistant who treated him on February 13, 2004 and excused him from work for the period February 13 to 16, 2004. Also submitted was a report from Dr. John R. Mulvey, a Board-certified family practitioner, dated February 16, 2004, who noted that appellant was under his care since February 16, 2004. Dr. Mulvey advised that appellant could return to light-duty work following a magnetic resonance imaging (MRI) scan of the left knee.

In a letter dated March 2, 2004, the Office advised appellant of the type of factual evidence needed to establish his claim and requested that he submit such evidence.

Appellant submitted a left knee x-ray report dated February 13, 2004 which revealed no evidence of fracture. An MRI scan of the left knee dated February 20, 2004 revealed a medial meniscus tear. In a prescription note from Dr. Mulvey dated February 26, 2004, he indicated that appellant was under his professional care from February 20 to 26, 2004 and could return to light duty. A March 3, 2004 work disability report from Dr. Brian C. DeMuth, a Board-certified orthopedist, indicated that appellant sustained a left medial meniscus tear on February 12, 2004 and stopped work on February 13, 2004. He advised that appellant could return to work light duty six hours per day with restrictions on walking and standing.

In a decision dated April 2, 2004, the Office denied appellant's claim as the evidence was not sufficient to establish that he sustained an injury on February 12, 2004.

In a letter dated April 14, 2004, appellant requested an oral hearing before an Office hearing representative. A hearing was held on December 14, 2004. Appellant testified that on February 12, 2004 he was getting out of his mail truck and carrying his mailbag. He put his left foot down and heard a pop in his left knee. Appellant's knee became sore but he was able to finish his mail route. He submitted treatment notes from December 23, 2003 to February 16, 2004 which noted that appellant was treated for sleep apnea and stomach aches. An accident report dated February 12, 2004 was signed by Joseph R. Capaldo, a supervisor, who noted that appellant was dismounting his mail truck and placed his left foot down and felt a pop. He indicated that appellant's knee got progressively worse and he sought treatment at the emergency room. Mr. Capaldo advised that appellant returned to light-duty work. Emergency room records dated February 13, 2004 prepared by Dr. Michael Piarulli, Board-certified in emergency medicine, noted appellant's treatment for a left knee injury which occurred on February 12, 2004 while appellant was at work. Dr. Piarulli diagnosed sprain of the left knee with effusion. Appellant submitted unsigned treatment notes dated February 16 and 24, 2004 which noted that appellant was a letter carrier who injured his left knee on February 12, 2004 when walking down stairs. Other reports from Dr. DeMuth dated March 3 to June 23, 2004 indicated that appellant sustained a left medial meniscus tear on February 12, 2004 when he was dismounting his mail truck. In a report dated April 25, 2004, Dr. DeMuth advised that appellant injured his left knee on February 12, 2004 when he stepped from his mail truck and heard a loud pop from the left knee. He noted that the MRI scan revealed a left medial meniscus tear. Dr. DeMuth diagnosed a work injury resulting in a meniscal tear of the left knee and recommended surgical arthroscopy. In an operative report dated April 26, 2004, Dr. DeMuth performed an arthroscopy of the left

knee and diagnosed a medial meniscal tear of the left knee. A report from Dr. Joshua N. Aaron, a Board-certified internist, dated May 17, 2004, noted treating appellant for a sleep disorder.

By decision dated March 23, 2005, the hearing representative affirmed the April 2, 2004 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing 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 filed within the applicable time limitation 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[1]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[2] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[3]

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.[4] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[5]

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[1] *Gary J. Watling*, 52 ECAB 357 (2001).

[2] *Michael E. Smith*, 50 ECAB 313 (1999).

[3] *Id*.

[4] *Leslie C. Moore*, 52 ECAB 132 (2000).

[5] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

ANALYSIS

The Office denied appellant's claim on the grounds that he failed to establish that he sustained an injury on February 12, 2004. With regard to the incident that date, the Board finds that the evidence supports that appellant was dismounting from his mail truck and placed his weight on his left knee. Appellant has provided a consistent history of the injury as reported on medical reports and in his testimony. Emergency room records dated February 13, 2004 and subsequent treatment notes advised that appellant was treated for a left knee injury which occurred on February 12, 2004 while he was at work. Mr. Capaldo, appellant's supervisor, noted on February 12, 2004 that appellant reported dismounting from his mail truck and placing his left foot on the ground and experiencing a "pop" in his left knee. Dr. DeMuth indicated that appellant sustained a left medial meniscus tear on February 12, 2004 while dismounting from his mail truck. Likewise, appellant's testimony at the oral hearing on December 14, 2004 addressed his history of injury, noting that on February 12, 2004 he was getting out of his mail truck and was carrying his mailbag when he put his left foot down and heard a pop in his left knee. The Board finds that appellant's statements are consistent with the surrounding facts and the circumstances and that he experienced the employment incident on February 12, 2004.

The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a left knee injury on February 12, 2004 causally related to the accepted incident. Appellant submitted a note from a physician's assistant who indicated he was treated on February 13, 2004 and was excused from work for the period February 13 to 16, 2004. The Board has held that treatment notes signed by a physician's assistant are not considered medical evidence as a physician's assistant is not defined as a physician under the Act.[6] Therefore, these reports are insufficient to meet appellant's burden of proof.

Reports from Dr. Mulvey dated February 16 and 26, 2004 noted that appellant was under his care from February 16 to 26, 2004 and could return to light duty. However, Dr. Mulvey failed to address the February 12, 2004 incident and did not provide a rationalized opinion regarding the causal relationship between appellant's left knee injury and the February 12, 2004 incident.[7]

A work disability report from Dr. DeMuth dated March 3, 2004 noted that appellant sustained a left medial meniscus tear on February 12, 2004 and stopped work on February 13, 2004. Other reports from Dr. DeMuth noted that appellant sustained a left medial meniscus tear on February 12, 2004 when he was stepping from a mail truck and experienced a popping sensation in his left knee. However, Dr. DeMuth failed to provide a rationalized opinion regarding the causal relationship between appellant's left knee injury and the accepted employment incident.[8] Although Dr. DeMuth generally supported causal relationship, he did not

[6] *See* 5 U.S.C. § 8101(2) (this subsection defines a ''physician'' as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

[7] *See Jimmie H. Duckett*, *supra* note 5.

[8] *Id.*

provide medical rationale explaining the basis for his stated conclusion. He did not specifically address how appellant's left knee condition was caused or contributed to by the activity of dismounting from his postal vehicle.[9] Dr. DeMuth did not explain the process by which stepping out of a truck would cause the diagnosed condition and why such condition would not be due to any nonwork factors. Therefore, this report is insufficient to meet appellant's burden of proof.

The remainder of the medical evidence, including an x-ray report of the left knee dated February 13, 2004, MRI scan of the left knee dated February 20, 2004 and various unsigned treatment notes dated February 16 to 26, 2004, fail to provide an opinion on the causal relationship between appellant's job and his diagnosed left knee injury. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.[10]

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a left knee condition causally related to his February 12, 2004 employment incident.[11]

[9] *Id.*

[10] *See Dennis M. Mascarenas,* 49 ECAB 215 (1997).

[11] With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 1, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board