

By letter dated August 4, 2003, the Office informed appellant that the information was insufficient to support his occupational disease claim and requested that he clarify whether he was claiming a traumatic injury or an occupational disease and advised him of the medical and factual information required. Appellant was allotted 30 days in which to reply, but failed to do so within the allotted time.

By decision dated September 5, 2003, the Office denied appellant's claim on the grounds that the record contained no medical evidence providing a diagnosis of a condition connected to the accepted employment incident or damage to his knee over time. The Office found the evidence sufficient to establish that the claimed event occurred and noted that it was unclear whether he incorrectly filed an occupational claim for further damage to his knee over time or was claiming "the traumatic injury."

In an undated letter received by the Office on September 9, 2003, appellant indicated that he was filing a traumatic injury claim for an incident that occurred on June 20, 2002. Appellant explained that, on June 20, 2002, when assisting colleagues, he stepped on a strap, went down on his right knee and "left knee went straight out therefore injuring both knees." He also noted that he could feel vibrations in his knees whenever he moves heavy equipment which he indicated was painful.

On September 22, 2003 the Office received operative reports dated August 12 and September 4, 2002 and August 6, 2003 by Dr. Ray C. Wasielewski, a treating Board-certified orthopedic surgeon, discharge summaries dated August 9 and 15, 2002 by Dr. Wasielewski, progress notes for the period May 20, 2002 to August 23, 2003, reports dated July 2 and October 22, 2002, January 21 and July 22, 2003 by Dr. Wasielewski, a May 20, 2002 report by Dr. Henry D. Rocco, a treating Board-certified orthopedic surgeon, laboratory test results and x-ray interpretations of his knee.

In an August 12, 2002 operative report, Dr. Wasielewski diagnosed severe right knee arthropathy with instability and deformity and noted that appellant underwent an operation for a total right knee replacement. In a discharge summary dated August 12, 2002, the physician diagnosed status post right total knee arthroplasty.

Dr. Wasielewski, in a September 4, 2002 operative report, diagnosed arthrofibrosis of the right knee and that appellant underwent an operation for right knee manipulation.

In reports October 22, 2002 and January 21, 2003, Dr. Wasielewski related that appellant was doing well since his operation. In a July 22, 2003 report, Dr. Wasielewski noted that appellant's right knee was doing well and that he "was in today regarding his left knee."

In the August 6, 2003 operative report, Dr. Wasielewski diagnosed severe osteoarthritis of the left knee and reported that appellant underwent an operation for a total left knee replacement. Dr. Wasielewski, in an August 9, 2003 discharge summary, diagnosed left knee osteoarthritis and status post left total knee replacement.

In a May 20, 2002 report, Dr. Rocco diagnosed severe bilateral osteoarthritis.

In a July 2, 2002 report, Dr. Wasielewski diagnosed severe knee arthritis. A physical examination revealed significant laxity in the knee and “the knee clearly opened on varus stress testing.” Dr. Wasielewski also reported “some subluxation of the two joints with respect to each other,” severe tricompartmental arthritis and severe bilateral knee arthropathy.

In a letter dated June 16, 2004, appellant, through counsel, requested reconsideration and referenced the July 2, 2002 report by Dr. Wasielewski in support of his request.

By decision dated July 14, 2004, the Office denied modification of the September 5, 2003 decision. The Office found that appellant had not submitted sufficient medical opinion evidence to establish a causal relationship between his diagnosed condition and the June 20, 2002 employment incident.

LEGAL PRECEDENT

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that she or he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.¹ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.² 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 incident. The opinion of the physician must be based on a complete factual and medical background of the claimant,³ must be one of reasonable medical certainty³ 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

Neither the fact that a condition became apparent during a period of employment, nor the belief of appellant that the condition was caused or aggravated by employment conditions is sufficient to establish causal relationship.⁵

¹ *Beverly A. Spencer*, 55 ECAB ____ (Docket No. 03-2033, issued May 3, 2004); *Gloria J. McPherson*, 51 ECAB 441 (2000).

² *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004).

³ *Steven S. Saleh*, 55 ECAB ____ (Docket No. 03-2232, issued December 12, 2003).

⁴ *Kathy A. Kelley*, 55 ECAB ____ (Docket No. 03-1660, issued January 5, 2004).

⁵ *Phillip L. Barnes*, *supra* note 2.

ANALYSIS

In this case, the Office accepted and there is no dispute that the incident of June 20, 2002 occurred as alleged, that appellant stepped on a strap while performing his duties, which caused his right leg to go backwards. Therefore, an incident occurring in the performance of duty at the time, place and in the manner alleged has been established.

In denying appellant's claim, the Office found that appellant failed to submit sufficient medical evidence to establish that the June 20, 2002 employment incident caused appellant's right knee condition, as alleged. The Board finds that none of the medical evidence submitted by appellant relates his knee conditions to the reported employment incident. Dr. Rocco diagnosed severe bilateral osteoarthritis in a May 20, 2002 report, which predates the June 20, 2002 employment incident. As this report predates the June 20, 2002 employment incident, it is insufficient to support his claim of an employment injury as the incident had not occurred at the time of the report. Second, this report establishes that appellant has preexisting bilateral osteoarthritis of his knees. Similarly, Dr. Wasielewski's reports, operative reports and discharge summaries are also insufficient to support appellant's claim. In his July 2, 2002 report, Dr. Wasielewski diagnosed severe knee arthritis and noted physical findings which included laxity in the knee, "the knee clearly opened on varus stress testing," severe tricompartmental arthritis and severe bilateral knee arthropathy and "some subluxation of the two joints with respect to each other." None of the subsequent reports, discharge summaries or operative reports by Dr. Wasielewski identify the cause of appellant's knee conditions aside from severe arthritis. As these reports lack a medical opinion concluding that appellant's diagnosed knee condition resulted from or was aggravated by his June 20, 2002 employment incident, they are insufficient to meet appellant's burden of proof.

Appellant has failed to submit any medical evidence based on an accurate history and medical opinion that the June 20, 2002 employment incident caused or contributed to his current knee conditions. Therefore appellant has failed to meet his burden of proof and the Office properly denied his claim.

CONCLUSION

The Board finds that appellant failed to establish that his knee condition was causally related to a June 20, 2002 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 14, 2004 is affirmed.

Issued: January 5, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member