

**United States Department of Labor
Employees' Compensation Appeals Board**

BRADFORD McDONALD, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Shawnee Mission, KS, Employer**

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**Docket No. 05-773
Issued: June 17, 2005**

Appearances:
Bradford McDonald, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On February 15, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated December 20, 2004, denying his request for a review of the written record and an October 15, 2004 decision, denying his claim for a right knee injury on August 27, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the October 15 and December 20, 2004 decisions.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a right knee injury on August 27, 2004 causally related to his employment; and (2) whether the Office properly denied appellant's request for a review of the written record.

FACTUAL HISTORY

On August 30, 2004 appellant, then a 57-year-old custodian, filed a traumatic injury claim alleging that on August 27, 2004 he injured his right knee at work while sweeping the floor.

By letter dated September 13, 2004, the Office advised appellant that he needed to submit additional evidence in support of his claim, including a detailed medical report containing a diagnosis and history, findings on physical examination, test results and an explanation of how the diagnosed condition was causally related to his work activities on August 27, 2004.

An August 27, 2004 emergency room report indicated that appellant's right knee "locked up" while he was sweeping steps and he felt a "twinge." An August 27, 2004 x-ray report indicated moderate degenerative changes in the right knee and a possible small joint effusion.

In an August 31, 2004 duty status report, Dr. Bradley A. Breeden, an attending osteopath and family practitioner, diagnosed a right knee strain and provided work restrictions. In a narrative report dated August 31, 2004, he stated that appellant did not know the cause of his right knee injury. The history given by appellant was that on an unspecified date he was bending over a water fountain at work when a coworker "goosed" him, causing back spasms. He went home later and his back pain caused him to fall and strike his right knee on concrete steps. Appellant indicated that his knee symptoms began while he was sweeping the employing establishment main work floor. Dr. Breeden provided findings on physical examination and diagnosed a right knee strain of "uncertain etiology, given the medical records."¹ He recommended a magnetic resonance imaging (MRI) scan of the right knee. In a report dated September 3, 2004, Dr. Breeden diagnosed a right knee strain with chronic degenerative joint disease, preexisting.

In a September 9, 2004 report, Dr. Breeden noted that he had reviewed a September 3, 2004 MRI scan² and stated that "all of [appellant's] symptoms for the right knee are associated with chronic degenerative changes and not associated with work activity."

By decision dated October 15, 2004, the Office denied appellant's claim on the grounds that the evidence failed to establish that he sustained a right knee injury on August 27, 2004 causally related to his employment.

By letter postmarked November 19, 2004, appellant requested a review of the written record. He submitted an October 6, 2004 MRI scan report that indicated several conditions in his right knee but did not address the issue of causal relationship.

By decision dated December 20, 2004, the Office denied appellant's request for a review of the written record on the grounds that it was untimely filed and the issue could equally well be addressed through a reconsideration request and the submission of additional evidence.³

¹ Dr. Breeden noted that appellant had a history of low back pain dating back to 1978 and had fallen on several occasions due to back and leg pain.

² An MRI scan dated September 3, 2004, revealed that appellant had a degenerative medial meniscal tear, lateral meniscal tear, joint effusion and chondromalacia of the medial and patellofemoral compartments.

³ Appellant submitted additional evidence subsequent to the Office decision of December 20, 2004. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

LEGAL PRECEDENT -- ISSUE 1

To establish a causal relationship between appellant's right knee condition and his employment, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's 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

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.⁵ Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance of duty and that his disability was caused or aggravated by his employment.⁶ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁷ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.⁸

ANALYSIS -- ISSUE 1

Appellant's treating physician, Dr. Breeden, diagnosed a right knee strain with chronic degenerative joint disease, preexisting. He stated his opinion that appellant's right knee conditions were caused by chronic degenerative changes rather than his work activity. There is no medical evidence of record establishing that appellant's right knee conditions were caused or aggravated by his work activities on August 27, 2004 or any other employment factors. Therefore, the Office properly denied his claim.

⁴ *Gloria J. McPherson*, 51 ECAB 441 (2000).

⁵ *William Nimitz, Jr.*, 30 ECAB 567 (1979).

⁶ *Daniel R. Hickman*, 34 ECAB 1220 (1983).

⁷ *Edward E. Olson*, 35 ECAB 1099 (1984).

⁸ *Robert A. Boyle*, 54 ECAB ____ (Docket No. 02-2177, issued January 27, 2003).

LEGAL PRECEDENT -- ISSUE 2

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record.⁹ A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision, for which the hearing is sought.¹⁰ A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which the hearing is sought.¹¹ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.¹² In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.¹³

ANALYSIS -- ISSUE 2

Appellant's request for a review of the written record was postmarked November 19, 2004, more than 30 days after the Office's October 15, 2004 decision. Therefore, appellant was not entitled to a hearing as a matter of right. The Office exercised its discretion and determined that the issue in the case, causal relationship, could be resolved through a request for reconsideration and the submission of additional evidence. The Board finds no evidence to indicate that the Office abused its discretion in denying appellant's untimely request for a review of the written record in its December 20, 2004 decision.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a right knee condition on August 27, 2004 causally related to his federal employment. The Board further finds that the Office did not abuse its discretion in denying his untimely request for a review of the written record.

⁹ 5 U.S.C. § 8124(b) of the Federal Employees' Compensation Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary of Labor is entitled to a hearing on his claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary of Labor. Section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing; a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days. *See Charles J. Prudencio*, 41 ECAB 499 (1990).

¹⁰ 20 C.F.R. § 10.616(a).

¹¹ *James Smith*, 53 ECAB 188 (2001).

¹² 20 C.F.R. § 10.616(b).

¹³ *James Smith*, *supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 20 and October 15, 2004 are affirmed.

Issued: June 17, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member