United States Department of Labor
Employees' Compensation Appeals Board

ALAN PETTY, Appellant	)	
and	)	**Docket No. 05-1532**
	)	**Issued: October 19, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On July 13, 2005 appellant filed an appeal of the Office of Workers' Compensation Programs' April 8, 2005 merit decision denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that his diagnosed left meniscus tear was causally related to his accepted May 16, 2001 employment injury.

FACTUAL HISTORY

On May 4, 2003 appellant, a 45-year-old mail carrier, filed a traumatic injury claim, alleging that on May 16, 2001 he injured his left knee while delivering mail. He stated that his left knee buckled and he experienced a sharp pain when he stepped on an uneven sidewalk. Appellant notified his supervisor of the incident on August 4, 2003 and stopped work in order to undergo surgery on August 5, 2003.

Appellant submitted a form, dated August 5, 2003 and signed by Dr. Pasha Generette, a Board-certified family practitioner, which provided medical clearance for him to undergo a left knee arthroscopy, debridement and meniscectomy.

In a Form 3956 dated May 3, 2003, Dr. Generette indicated that appellant had sustained an injury to his left and right knees, placed a checkmark in the "yes" box next to the term "job related" and released him to restricted duty.

In an August 8, 2003 narrative report, appellant stated that following his May 6, 2001 injury, he filed a claim for benefits (Form CA-2a), because he believed his knee pain was related to "previous injuries." He alleged that on May 17, 2001 he had been treated by an employing establishment physician, who "treated it like a sprain;" that a 2001 report of a magnetic resonance imaging (MRI) scan revealed torn meniscus cartilage in the left knee; and that Dr. Jonathan Hersch, a Board-certified orthopedic surgeon, now recommended surgery.

By letter dated August 28, 2003, the Office advised appellant that the information submitted was insufficient to establish his claim and requested that he provide within 30 days additional information, including a specific diagnosis and a physician's opinion as to the cause of his condition.

In response, appellant submitted physical therapy notes.

By decision dated October 3, 2003, the Office denied appellant's claim on the grounds that he failed to establish that he had sustained an injury in the performance of duty. The Office found that the evidence submitted was insufficient to establish that the events occurred as alleged and that there was no rationalized medical evidence to support that appellant's condition in 2003 was related to the alleged May 2001 injury.

Following the October 3, 2003 decision, appellant submitted physical therapy notes dated September 3 through October 16, 2003 and an unsigned medical report dated May 17, 2001 from Dr. Ruben Zabaleta, a treating physician. His report reflected appellant's statements that his pain began on May 6, 2001 when his knee buckled as he was walking down a street on his normal route. Appellant's left knee usually hurt more than his right knee and he experienced symptoms in his knee since 1994, when the initial injury occurred. His pain was intermittent, but appellant had been unable to complete his normal route. Dr. Zabaleta indicated that an x-ray of appellant's left knee revealed degenerative joint disease. On physical examination, he noted swelling of the left knee with effusion and tenderness medially; full extension with end range of motion pain; flexion 90 degrees with discomfort; stability with no laxity, abduction, adduction, varies/valgus stress; Apley grind, Lachman's test and drawer signs completely within normal limits; pulses 5/5 with normal capillary refill; and normal sensation throughout with normal reflexes. Dr. Zabaleta provided an assessment of "strain of left knee with DJD" and recommended restricted duty.

By letter dated July 21, 2004, appellant, through his representative, filed an appeal of the Office's October 3, 2003 decision.

Appellant submitted an unsigned report dated December 16, 2004 from Dr. Joseph N. Daniel, a treating physician,[1] reflecting that he was "most likely experiencing attacks of gouty arthritis." Dr. Daniel indicated that the reason for appellant's visit was "follow-up evaluation for symptomatic chip avulsion fracture left medial malleolus."[2]

By decision dated January 6, 2005, the Board remanded the case to the Office for reconstruction of the case file, on the grounds that the record was incomplete.

By decision dated April 8, 2005, the Office accepted appellant's claim for left knee strain resulting from the May 17, 2001 employment-related incident. It denied his claim for compensation and medical benefits relating to his claimed 2003 condition of meniscus tear.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[4]

An employee seeking benefits under the Act has the burden of proof to establish 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 or specific condition for which compensation is claimed is causally related to the employment injury.[5] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury" consisting of two components which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place

[1] Although Dr. Daniel represents that he is an osteopathic physician, his credentials cannot be verified.

[2] The medial malleolus is the rounded protuberance on the medial surface of the ankle joint. DORLAND'S *Illustrated Medical Dictionary* (30th ed. 2003).

[3] 5 U.S.C. § 8102(a).

[4] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB ___ (Docket No. 04-1257, issued September 10, 2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[5] *Robert Broome*, 55 ECAB ___ (Docket No. 04-93, issued February 23, 2004).

and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[6]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[7] An award of compensation may not be based on appellant's belief of causal relationship.[8] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[9] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[10]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[11]

ANALYSIS

The Office accepted that appellant strained his left knee as alleged on May 16, 2001. Medical evidence submitted in support of his claim included physical therapy reports and reports from Dr. Generette, Dr. Zabaleta and Dr. Daniel. The Board, however, finds that these reports lack adequate rationale to establish a causal relationship between appellant's work-related incident in 2001 and his meniscus tear, which required surgery in 2003. Therefore, appellant has failed to satisfy his burden of proof.

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[6] *Deborah L. Beatty*, 54 ECAB ___ (Docket No. 02-2294, issued January 15, 2003). *See also Tracey P. Spillane*, 54 ECAB ___ (Docket No. 02-2190, issued June 12, 2003); *Betty J. Smith*, 54 ECAB ___ (Docket No. 02-149, issued October 29, 2002). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101 (5). *See* 20 C.F.R. § 10.5(q), (ee).

[7] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[8] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[9] *Florencio D. Flores*, 55 ECAB ___ (Docket No. 04-942, issued July 12, 2004).

[10] 20 C.F.R. § 10.303(a).

[11] *John W. Montoya*, 54 ECAB ___ (Docket No. 02-2249, issued January 3, 2003).

Medical evidence not offering rationale on the cause of a claimant's condition is of diminished probative value and insufficient to meet an employee's burden of proof.[12] Dr. Generette's May 3 and August 5, 2003 reports are, therefore, insufficient to meet appellant's burden. He indicated that appellant had suffered an injury two years earlier to his left and right knees, placed a checkmark in the "yes" box next to the term "job related" and provided medical clearance for appellant to undergo a left knee arthroscopy, debridement and meniscectomy.[13] However, he gave no explanation as to how appellant's then current condition was related to his May 16, 2001 work-related incident. The Board has consistently held that a physician's opinion on causal relationship that consists of checking "yes" to a form question is of diminished probative value.[14]

Dr. Zabaleta's report lacks probative value for several reasons. First, it was unsigned. It is well established that to constitute competent medical opinion evidence, the medical evidence submitted must be signed by a qualified physician.[15] Further, the facts as presented by Dr. Zabaleta conflict with those provided by appellant. Although he examined appellant on May 17, 2001 his report reflects that appellant's employment injury occurred on May 6, 2001, rather than on May 16, 2001, as alleged by him in his claim for traumatic injury. Moreover, Dr. Zabaleta provided a diagnosis of "strain of the left knee with DJD" and did not raise the possibility that appellant had suffered a torn meniscus. Thus, his report does not assist appellant in connecting his accepted 2001 injury to his 2003 condition. In fact, he informed Dr. Zabaleta that he had been experiencing symptoms in his knee since an initial 1994 injury.[16] Finally, Dr. Zabaleta's report is two years old. It would have been impossible in 2001 for him to address appellant's condition in 2003.

Dr. Daniel's report also lacks probative value. It, too, is unsigned and thus does not constitute competent medical evidence. Moreover, Dr. Daniel indicated that he evaluated appellant for symptomatic chip avulsion fracture left medial malleolus and attacks of gouty arthritis." He provided absolutely no explanation as to how these conditions could be connected to his May 16, 2001 injury or to his torn meniscus.

The reports of therapists have no probative value on medical questions because a therapist is not a physician as defined by 5 U.S.C. § 8101(2). Therefore, the Board finds that the physical therapy reports submitted by appellant do not constitute competent medical evidence.[17]

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[12] *See Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

[13] The Board has held that contemporaneous evidence is entitled to greater probative value than later evidence; *see Eileen R. Kates*, 46 ECAB 573 (1995); *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).

[14] *See Gary J. Watling*, 52 ECAB 278 (2001).

[15] *See James A. Long*, 40 ECAB 538 (1989); *Merton J. Sills*, 39 ECAB 572 (1988).

[16] The record contains no evidence that a claim for compensation was filed for an injury that occurred in 1994.

[17] *See Barbara J. Williams*, 40 ECAB 649, 657 (1988).

In this case, there is insufficient medical evidence of record to establish a causal relationship between appellant's diagnosed condition of torn meniscus and the accepted May 16, 2001 work-related incident. The Office advised appellant of the type of medical evidence required to establish his claim; however, he failed to submit such evidence. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.[18] To establish causal relationship, he must submit a physician's report in which the physician reviews those factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination and his medical history, explain how these employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his opinion.[19] Appellant failed to submit such evidence and, therefore, failed to satisfy his burden of proof.

CONCLUSION

The Board finds that appellant has not established that his diagnosed left meniscus tear was causally related to his accepted May 16, 2001 employment injury. Accordingly, his claim for medical and compensation benefits related to this condition must be denied.

[18] *Patricia J. Glenn*, 53 ECAB 159 (2001).

[19] *Robert Broome*, 55 ECAB ___ (Docket No. 04-93, issued February 23, 2004).

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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