United States Department of Labor
Employees' Compensation Appeals Board

DANIEL R. FISSELL, Appellant	)	
and	)	**Docket No. 06-397**
	)	**Issued: April 13, 2006**
DEPARTMENT OF AGRICULTURE, FOREST SERVICE, MOUNT HOOD NATIONAL FOREST, Sandy, OR, Employer	)	

Appearances:
Daniel R. Fissell, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On December 12, 2005 appellant filed a timely appeal of a September 8, 2005 merit decision by the Office of Workers' Compensation Programs which denied modification of an August 23, 2004 decision, finding that appellant did not sustain an 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 this case.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty on October 28, 2003.

FACTUAL HISTORY

On May 27, 2004 appellant, then a 46-year-old range conservationist, filed a traumatic injury claim alleging that on October 28, 2003 he sustained an injury to his right knee while kneeling, squatting and bending in his job. Appellant did not stop work.

In support of his claim, appellant submitted a May 19, 2004 report, in which Dr. John C. Schwartz, a Board-certified orthopedic surgeon, noted that appellant fell the previous fall and subsequently had intermittent pain in the medial joint line of the right knee. The pain worsened with squatting and stooping. He diagnosed a medial meniscal tear and chondromalacia of the patella and requested a magnetic resonance imaging (MRI) scan. In a June 3, 2004 disability slip, Dr. Schwartz, indicated that appellant was evaluated for a work-related injury to the right knee. He advised that appellant could return to work.

By letter dated July 9, 2004, the Office advised appellant that additional factual and medical evidence was needed. The Office explained that a physician's opinion on causal relationship was crucial to his claim and allotted appellant 30 days to submit the requested information.

In an August 9, 2004 response, appellant described the events leading to his injury on October 28, 2003 which he alleged occurred while he performed a vegetation monitoring walk. He also indicated that this was a process occurring over an eight-hour period that included bending and squatting. Appellant alleged that the immediate effects of the injury were a "severe shooting pain that burned in and around my right knee cap." He alleged that the pain would come and go.

By decision dated August 23, 2004, the Office denied appellant's claim on the grounds that he did not establish an injury as alleged. The Office found that the evidence was insufficient to show that the claimed event occurred as alleged.

Appellant requested reconsideration on May 19, 2005 and enclosed copies of previously submitted reports, physical therapy reports and additional medical reports. In a report dated September 20, 2004, Dr. Schwartz provided a correction to his medical report of May 19, 2004. He explained that his correction was due to an error which occurred when his medical assistant wrote that appellant "fell last fall" although he had noted that appellant performed "lots of squatting/stooping." Dr. Schwartz also indicated that appellant had written that "the injury had happened from 'squatting for extended time.'" He also provided a copy of a September 9, 2004 amendment to his September 20, 2004 report.

In a June 30, 2004 wellness report, Dr. Peter A. Peruzzo, Board-certified in family medicine, indicated that appellant would follow up with regard to his cholesterol. Appellant also provided a copy of his certificate of medical examination dated June 30, 2004.

By decision dated September 8, 2005, the Office modified its August 23, 2004 decision. The Office found that the evidence was sufficient to show that the claimed event occurred on October 28, 2003 as alleged. However, the Office found that appellant had not provided sufficient evidence to support that he sustained a diagnosed medical condition as a result of the work incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 timely filed within the applicable time limitation period of the Act[2] and that an injury was sustained in the performance of duty.[3] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

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 he or she actually experienced the employment incident at the time, place and in the manner alleged.[5] 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.[6]

ANALYSIS

Appellant alleged that he sustained a right knee condition while squatting and stooping during a vegetation check at work on October 28, 2003. The Office accepted that appellant was squatting and stooping during a vegetation check at work. The Board finds that the first component of fact of injury, the claimed incident -- squatting and stooping during a vegetation check at work on October 28, 2003, occurred as alleged.

However, the medical evidence is insufficient to establish that this employment incident caused an injury. The medical reports of record do not establish that squatting and stooping during a vegetation check at work caused a personal injury on October 28, 2003. The medical evidence contains no reasoned explanation of how the specific employment incident on October 28, 2003 caused or aggravated his knee condition.[7]

Dr. Schwartz diagnosed medial meniscal tear and chondromalacia patella and included appellant's explanation that his "injury had happened from 'squatting for extended time.'" However, his report did not provide medical rationale in support of his opinion on causal

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *James E. Chadden Sr.*, 40 ECAB 312 (1988).

[4] *Delores C. Ellyet*, 41 ECAB 992 (1990).

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Id*.

[7] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

relationship nor did he specifically address a relationship between appellant's diagnosed conditions and his employment activities on October 28, 2003. For example, he did not identify October 28, 2003 as the date of injury or explain how squatting would cause or contribute to the knee conditions first diagnosed seven months later. The Board notes that the first medical treatment for the claimed injury did not occur for over six months after October 28, 2003. The Board has long held that medical opinions not containing rationale on causal relation are of diminished probative value are generally insufficient to meet appellant's burden of proof.[8] Without adequate reasoning to support the stated conclusion, Dr. Schwartz's reports are insufficient to meet appellant's burden of proof.[9] The other reports submitted by appellant do not address the issue of causal relationship. The record also contains several physical therapy reports[10] and operative reports related to his shoulder condition. However, those reports are not relevant to his claim for a right knee condition.

Because the medical reports submitted by appellant do not address how the October 28, 2003 activities at work caused or aggravated his diagnosed right knee condition, these reports are of limited probative value.[11] The evidence is insufficient to establish that the October 28, 2003 employment incident caused or aggravated a specific injury.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

[8] *Carolyn F. Allen*, 47 ECAB 240 (1995).

[9] *See George Randolph Taylor*, *supra* note 7.

[10] Health care providers such as nurses, acupuncturists, physician's assistants and physical therapists are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value. *Jan A. White*, 34 ECAB 515, 518 (1983).

[11] *See Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).

ORDER

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

Issued: April 13, 2006
Washington, DC

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

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