United States Department of Labor
Employees' Compensation Appeals Board

N.H., Appellant	)	
and	)	**Docket No. 06-1923**
	)	**Issued: December 28, 2006**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Charleston, SC, Employer	)	

Appearances:
Appellant, pro se
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 August 15, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' November 2, 2005 decision denying his traumatic injury claim and March 31, 2006 nonmerit decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty; and (2) whether the Office properly refused to reopen his case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On September 15, 2005 appellant, then a 54-year-old maintenance mechanic, filed a traumatic injury claim alleging that he slipped and twisted his left knee while pushing a ceiling

tile cart on February 4, 2005. He stated that he experienced immediate pain on the inside of his left knee.[1]

On September 30, 2005 the Office informed appellant that the evidence submitted was insufficient to establish his claim. It provided him 30 days to provide additional information, including a medical report containing a diagnosis and a rationalized opinion relating his diagnosed condition to factors of his employment.

In an October 6, 2005 letter, Mona L. Wilson, an employee relations specialist, who stated that appellant had been treated at the Ralph H. Johnson Medical Center during the previous seven months for a medial meniscal tear of his left knee, which was revealed in a May 11, 2005 magnetic resonance imaging (MRI) scan. Due to a high volume of patients being seen at their facility, appellant was unable to obtain an orthopedic consultation until September 15, 2005.

The employing establishment submitted medical records from the Ralph H. Johnson Medical Center. In electronically signed urgent care notes, dated February 4, 2005, Dr. Anthony B. Joseph, a Board-certified internist, diagnosed left knee sprain. He indicated that appellant had point tenderness on the medial inferior aspect of the left knee. Dr. Joseph related that appellant had been pushing a cart at work and felt a sharp pain in the medial aspect of his left knee. Although his knee "gave away," appellant did not fall. In notes dated March 10, 2005, William A. Wright, a physicians' assistant, related that appellant twisted and strained his left knee on February 4, 2005. On May 13, 2005 Mr. Wright stated that an MRI scan of appellant's left knee demonstrated probable acute contusion of Hoffa's fat pad and a medial meniscus tear, posterior horn with involvement of the meniscal capsular attachment. On September 15, 2005 appellant was seen by Dr. Michael S. Wildstein, a treating physician, for an orthopedic consultation. Dr. Wildstein stated that an MRI scan revealed a post-horn tear of his left knee, which resulted from an injury sustained approximately six months prior.

By decision dated November 2, 2005, the Office denied appellant's claim finding that the February 4, 2005 incident had occurred, but that the record did not contain any medical evidence that provided a diagnosis that could be connected to the events or the work injury of February 4, 2005.

On March 10, 2006 appellant requested reconsideration of the Office's November 2, 2005 decision. In a note dated March 15, 2006, Ms. Wilson stated that appellant was in need of surgery and asked the Office to review the medical documents previously submitted. Appellant resubmitted copies of medical evidence previously considered. By decision dated March 31, 2006, the Office denied his request for reconsideration finding that he had neither raised a substantive legal question, nor included new and relevant evidence warranting a review of the November 2, 2005 decision.

[1] The CA-1 form reflects that appellant signed the form on February 14, 2005, but that it was not actually submitted until September 15, 2005.

The record reflects that, on March 31, 2006, the Office received unsigned notes dated November 9, 2005 from Dr. Robert E. Elvington, a Board-certified orthopedic surgeon.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation 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.[2] 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 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.[3]

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.[4] An award of compensation may not be based on appellant's belief of causal relationship.[5] 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.[6] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[7]

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

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[2] *Robert Broome*, 55 ECAB 339 (2004).

[3] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (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).

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

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

[6] *Id.*

[7] 20 C.F.R. § 10.303(a).

by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[8]

The Board has held that unsigned medical reports are of no probative value[9] and that any medical evidence upon which the Office relies to resolve an issue must be in writing and signed by a qualified physician.[10]

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision regarding whether appellant sustained an injury in the performance of duty.

An employee who claims benefits under the Act has the burden of establishing the essential elements of his claim. 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 the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.[11] However, it is well established that proceedings under the Act are not adversarial in nature and, while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[12]

The Office accepted that appellant twisted his left knee on February 4, 2005 while pushing a cart. It found that there was no medical evidence that provided a diagnosis that could be connected to that injury. The Board notes that the medical evidence of record generally supports that appellant sustained an injury on February 4, 2004. In urgent care notes written on the date of the incident, Dr. Joseph stated that appellant had sustained a left knee sprain while pushing a cart at work. An MRI scan later revealed a medial meniscal tear. Dr. Joseph provided a definitive diagnosis, based on the information available at that time, which related appellant's left knee condition to the work incident. The remaining medical evidence of record also supports his claim. On September 15, 2005 Dr. Wildstein noted that appellant had sustained a post-horn meniscus tear of his left knee approximately six months before, as shown by MRI scan. On March 10 and May 13, 2005 Mr. Wright, a physicians' assistant, related that appellant twisted

[8] *John W. Montoya*, 54 ECAB 306 (2003).

[9] *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[10] *James A. Long*, 40 ECAB 538, 541 (1989).

[11] *See Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); *see also Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

[12] *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Virginia Richard*, *supra* note 11; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

and strained his left knee on February 4, 2005 and that an MRI scan of his left knee demonstrated probable acute contusion of Hoffa's fat pad and a medial meniscus tear, posterior horn with involvement of the meniscal capsular attachment. Although Mr. Wright is not a physician as defined by the Act,[13] his reports confirm that appellant continued to be treated for his left knee condition February 4, 2005. In November 9, 2005 notes, Dr. Elvington stated that appellant had an obvious medial meniscal tear of the left knee "from a highly comminuted mechanism of injury." As his notes were unsigned, they lack probative value on the issue of causal relationship and do not establish appellant's claim. However, they are factually consistent with his treatment for his employment-related injury.

The Board notes that, while none of the reports of the attending physicians are fully rationalized, they are consistent in indicating that he sustained an employment-related left knee condition and are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet his burden of proof to establish his claim, they raise an uncontroverted inference between appellant's claimed condition and the accepted incident and are sufficient to require further development of the medical evidence.[14] On remand, the Office shall obtain a rationalized opinion from a qualified physician as to whether appellant's current condition is causally related to the accepted incident and issue an appropriate decision in order to protect his rights of appeal.[15]

CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant sustained an injury in the performance of duty.[16]

[13] Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[14] *See Virginia Richard, supra* note11; *see also Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

[15] The Board notes that the Office received Dr. Elvington's November 9, 2005 notes on March 31, 2006, the date it issued its denial of appellant's request for reconsideration. Since the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision (see 20 C.F.R. § 501.2(c)), the Office must review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As Board's decisions are final as to the subject matter appealed, 20 C.F.R. § 501.6(c), it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office. *William A. Couch*, 41 ECAB 548, 1990. However, in light of the disposition of this appeal ruling in this case, the Board find's that the Office committed harmless error.

[16] In light of the Board's ruling on the first issue, the second issue before the Board is moot.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 31, 2006 and November 2, 2005 are set aside and remanded for further development consistent with this decision.

Issued: December 28, 2006
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