United States Department of Labor
Employees' Compensation Appeals Board

GARY E. WALKER, Appellant	)	
and	)	**Docket No. 06-719**
	)	**Issued: June 9, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Jackson, MS, Employer	)	

Appearances:
Gary E. Walker, 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

JURISDICTION

On February 6, 2006 appellant filed a timely appeal from the July 27, 2005 merit decision of the Office of Workers' Compensation Programs, which denied his claim that he sustained an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of his claim. The Board also has jurisdiction to review the Office's October 31, 2005 nonmerit decision denying reconsideration.

ISSUES

The issues are: (1) whether the September 23, 2003 incident at work caused an injury; and (2) whether the Office properly denied appellant's September 15, 2005 request for reconsideration.

FACTUAL HISTORY

On November 20, 2003 appellant, then a 51-year-old letter carrier, filed a claim alleging that he sustained an injury in the performance of duty on September 23, 2003 when he stepped into a water meter hole in the sidewalk while delivering mail.

In a decision dated January 13, 2004, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that the incident occurred as alleged. Further, the Office found that there was a diagnosis of "medial meniscus" but no elaboration of the injury or medical evidence connecting an injury to the incident alleged.

On October 7, 2003 x-rays were reported to show medial stage 1 arthritis of the right knee. In an October 16, 2003 treatment note, Dr. Gene R. Barrett, appellant's orthopedic surgeon, reported that a magnetic resonance imaging scan "basically showed a 60 percent chance of a medial meniscus tear and possible previous resection of [his] medial meniscus." On December 23, 2003 Dr. Barrett stated:

> "There has been a mix-up about his injury apparently. He did injury it back in September, apparently that was the original injury. He did not report that, he thought it was a minor situation and later on when he decided to have the surgery, we decided after failure of industrial physical therapy, then he went to workers' comp[ensation] because he did injure it at the job."

In a decision dated March 25, 2004, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office found that there were too many inconsistencies in the evidence and medical histories. The Office also found that appellant's doctor had not delineated any clear rationalized opinion, taking into account all of the prior knee conditions and injuries, concerning any possible relationship between the specific incident alleged and the condition for which he recently treated appellant.

On August 12, 2004 Dr. Barrett noted that appellant was hurting in the medial compartment of his right knee and had a little bit of swelling. He noted that appellant had a prior medial meniscectomy and currently had medial compartment arthritis. Dr. Barrett diagnosed medical compartment arthritis and addressed the mechanism of injury:

> "[Appellant], when he filled out his yellow information sheet, he thought the mechanism of injury was just purely sports related and therefore he put unknown. However, he did fall in a pothole at work and twisted his knee and I think this was definitely the mechanism of injury. We need to take this into account with his workers' comp[ensation]."

A December 4, 2003 operative report indicated that a proximal medial meniscectomy was performed on appellant's right knee.

In a decision dated November 23, 2004, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office found that the only new evidence submitted, the August 12, 2004 report from Dr. Barrett, did not clarify the mechanism of injury, the date of injury or the diagnosis of the injury.

On May 1, 2005 Dr. Barrett addressed appellant's history and the element of causal relationship:

> "I have reviewed [appellant's] chart very very carefully regarding his problems. Apparently back in December 1997, he first injured his right knee and had arthroscopy and partial medial meniscectomy. After that, [appellant] did extremely well having really no problems with it at all. After going back to working a route, delivering mail and walking for miles, he had no real problems with it. However, on September 23, 2003, [appellant] stated he was delivering dollar saver newspapers and came around a corner and stepped into a water meter covering hole in the sidewalk. This gave way causing his foot to go down, his knee hyperextended and he fell forward twisting his knee. Apparently, [appellant] had a witness that testified to this. Hoping this was not serious he did not really report it at work. [Appellant] was rather embarrassed by falling, he states. He began self-treatment with Ibuprofen and ice and the swelling did reduce but continued to have problems with it. On October 7, 2003 [appellant] was seen in my office for the first time since 1997, and at that point, we thought he might have a medial meniscus tear. We have a yellow entry form that we asked the patient to fill out. Sometimes this form can be confusing to the patient whether it is related to a sports injury or a work injury or to another type of injury. Apparently [appellant] states he was rather confused with the mechanism -- he put unknown and we thought it was related to sports. Apparently he put the wrong date down for the injury. [Appellant] put September 16, 2003; stated that he did not have his log with him at that time. He never reported the accident to workers' comp[ensation], he thought it was just a bruise until it continued to give him problems.
>
> "In lieu of reviewing his chart by myself and [appellant] giving me a time line summary of exactly what happened in 1997, I feel that it probably is related to the fall in the water meter cover and hyperextending his knee. I would recommend that it be covered under workers' compensation."

In a decision dated July 27, 2005, the Office reviewed the merits of appellant's case and modified its prior decision to find that evidence now clearly supported that an incident occurred on September 23, 2003, as alleged. The Office denied compensation, however, on the grounds that Dr. Barrett failed to relate a secure or clear diagnosis to the September 23, 2003 incident.

On September 15, 2005 appellant requested reconsideration. In support thereof, he submitted a copy of Dr. Barrett's August 12, 2004 report.

In a decision dated October 31, 2005, the Office denied a review of the merits of appellant's claim. The Office found that the information appellant submitted with his request was repetitious and insufficient to reopen his claim for a merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.[2]

Causal relationship is a medical issue,[3] 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 of the physician must be based on a complete factual and medical background of the claimant,[4] must be one of reasonable medical certainty,[5] 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.[6]

ANALYSIS -- ISSUE 1

In its July 27, 2005 merit decision, the Office found that the evidence now clearly supported that an incident occurred on September 23, 2003. The Office found that appellant had met his burden to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The question that remains is whether this incident caused an injury.

Dr. Barrett, the attending orthopedic surgeon, reported that this incident did cause an injury. But he never clearly identified the nature of that injury, or the particular diagnosis he meant to relate to the September 23, 2003 incident. The record contains references to several right knee conditions. On October 7, 2003 x-rays were reported to show medial stage 1 arthritis of the right knee. In his December 4, 2003 operative report, Dr. Barrett noted a Grade 2 chondromalacia of the medial femoral condyle, a Grade 2 chondromalacia of the medial tibial plateau, and a complex degenerative radial tear in the posterior horn of the medial meniscus. Whenever Dr. Barrett expressed an opinion on whether appellant's injury was related to the September 23, 2003 incident, he reported that "it" was probably related, without making clear

[1] 5 U.S.C. §§ 8101-8193.

[2] *See generally John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); *see also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15)-.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

[3] *Mary J. Briggs*, 37 ECAB 578 (1986).

[4] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[5] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[6] *See William E. Enright*, 31 ECAB 426, 430 (1980).

what "it" referred to. Neither the Office nor the Board can determine whether he meant that the September 23, 2003 incident caused the medial stage 1 arthritis noted on October 7, 2003 or the chondromalacia of the medial femoral condyle or the chondromalacia of the medial tibial plateau or the complex degenerative radial tear in the posterior horn of the medial meniscus, or whether the incident merely aggravated one or more of these conditions. The vagueness of Dr. Barrett's opinion diminishes its probative or evidentiary value.

Further, Dr. Barrett did not explain how he was able to determine that the September 23, 2003 incident caused or aggravated one or more of these diagnosed medical conditions. He did not explain, for instance, how the incident could have caused the arthritis seen two weeks later, or how he could determine that the incident contributed to the medial compartment arthritis diagnosed on August 12, 2004. Dr. Barrett did not explain how the September 23, 2003 incident caused or contributed to the chondromalacia found on December 4, 2003, and he did not explain how stepping into a hole and hyperextending a knee can tear the posterior horn of a meniscus, or how a complex and degenerative radial tear in the posterior horn was indicative of a fairly recent traumatic incident, as opposed to an injury from 1997. Medical conclusions unsupported by rationale are of little probative value.[7]

Because Dr. Barrett's opinion is vague about the particular diagnosis and offers no sound discussion of how the September 23, 2003 incident at work caused or contributed any particular diagnosis, and how he is able to make such a determination, the medical opinion evidence is insufficient to discharge appellant's burden of proof to establish the critical element of causal relationship. The Board will affirm the Office's July 27, 2005 merit decision denying appellant's claim that he sustained an injury in the performance of duty on September 23, 2003.

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.[8] The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[9]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[10]

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[7] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

[8] 5 U.S.C. § 8128(a).

[9] 20 C.F.R. § 10.605 (1999).

[10] *Id*. at § 10.606.

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.[11] A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[12]

ANALYSIS -- ISSUE 2

Appellant's timely September 15, 2005 request for reconsideration does not show that the Office erroneously applied or interpreted a specific point of law, nor does it advance a relevant legal argument not previously considered by the Office. Instead, to support his request, appellant submitted a copy of Dr. Barrett's August 12, 2004 report. The Office, however, previously received this report on September 20, 2004, and in its November 23, 2004 merit decision, the Office specifically addressed this report and found that it was of limited probative value because it mentioned the alleged work injury but gave no date and because its diagnosis of medial compartment arthritis was a preexisting condition. Evidence that repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case.[13]

Because Dr. Barrett's August 12, 2004 report is not new evidence as the Office has already considered it, the Board finds that appellant's September 15, 2005 request for reconsideration does not meet at least one of the three standards for obtaining a merit review of his case. The Board will therefore affirm the Office's October 31, 2005 decision denying that request.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that the September 23, 2003 incident at work caused an injury. The Office accepts that the incident occurred as alleged, but the medical opinion evidence has little probative value on whether the incident caused or aggravated any particular diagnosed medical condition.

The Board further finds that the Office properly denied appellant's September 15, 2005 request for reconsideration. The submission of evidence previously submitted and previously considered by the Office provided no basis for a merit review of his case.

[11] *Id*. at § 10.607(a).

[12] *Id*. at § 10.608.

[13] *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

ORDER

IT IS HEREBY ORDERED THAT the October 31 and July 27, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 9, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board