

In a July 23, 2003 duty status report, David I. Savin, a physician's assistant, diagnosed left knee pain which he described as a recurrence of a prior injury sustained while delivering mail. In a July 23, 2003 activity status report, he diagnosed "pain in joint involving lower leg" and released appellant to work with restrictions. In a report dated July 23, 2003, Mr. Savin noted that appellant reported that his left knee began to swell on that date while he delivered mail. He reviewed a July 23, 2003 x-ray interpretation of the left knee, which was reported as negative.

In a July 25, 2003 activity status report, Dr. Robert H. Toney, a treating Board-certified family practitioner, diagnosed "pain in joint involving lower leg" and released appellant to work with restrictions. In a report of the same date, he noted that appellant related that on July 23, 2003 while delivering mail his left knee swelled up. A physical examination revealed a stable left knee joint, no deformity, no swelling, a negative Lachman's, a negative drawer sign, a negative McMurray's sign, normal gait tenderness and full range of motion. Dr. Toney diagnosed knee pain.

In a report dated August 14, 2003, Dr. Michael Dvorkin, a treating Board-certified orthopedic surgeon, diagnosed a subtle lateral meniscus tear based upon a magnetic resonance imaging (MRI) scan. He opined that the tear was employment related due to the "long history dating back to March."

On January 6, 2005 the Office received a March 5, 2003 MRI scan and reports dated May 1 and August 14, 2003 by Dr. Dvorkin. The March 5, 2003 MRI scan revealed "[f]indings suspicious for a subtle tear of the lateral meniscus." On May 1, 2003 Dr. Dvorkin noted significant improvement in appellant's left knee. A physical examination revealed "no evidence of discomfort" and "some slight posterior lateral knee discomfort" on the medial side. In an August 14, 2003 report, Dr. Dvorkin noted that appellant "had a recent exacerbation of knee discomfort" since appellant's last visit and noted an MRI scan showed subtle meniscus tear. A physical examination revealed "tenderness over this joint line and pain upon terminal flexion and extension." He recommended an arthroscopy based upon appellant's "long history dating back to March with this work-related injury."

On February 14, 2005 the Office received duty status reports dated February 28 and April 10, 2003 diagnosing a left knee sprain;¹ a July 23, 2003 activity status report and July 23, 2003 duty status report by Mr. Savin; disability certificates dated March 27, April 10 and 14 and May 6, 2003; and a January 23, 2004 and duty status report diagnosing a lateral meniscus knee tear.

On March 25, 2005 the Office received appellant's claim for a recurrence of disability beginning July 23, 2003 due to his February 11, 2003 employment injury.

On April 29, 2005 the Office received a March 29, 2005 duty status report noting that appellant twisted his left knee on July 23, 2003.

In a letter dated June 28, 2005, the Office advised appellant that it required additional medical evidence to determine whether he sustained an injury in the performance of duty. The

¹ The signature is illegible.

Office asked appellant to submit a comprehensive medical report from a physician explaining how his claimed condition was causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days.

By decision dated September 21, 2005, the Office found that appellant did not sustain an injury while in the performance of duty on July 23, 2003. The Office found that the claimed incident occurred at the time, place and in the manner alleged but there was insufficient medical evidence addressing how appellant's work activities on July 23, 2003 caused or affected his left knee condition.

Appellant requested reconsideration on October 14, 2005.

On October 24, 2005 the Office received an October 13, 2005 duty status report diagnosing a left knee lateral meniscus tear and reporting that appellant injured himself on July 23, 2003 when he twisted his knee.

On October 27, 2005 the Office received reports dated March 27, April 10 and August 14, 2003 by Dr. Dvorkin, a March 5, 2003 MRI scan and a January 5, 2005 authorization request. In his March 27, 2003 report, he stated that appellant injured is left knee on February 12, 2003 when he slipped on ice. Dr. Dvorkin diagnosed a subtle lateral meniscus tear and a meniscus cyst based upon an MRI scan. In the April 10, 2003 report, Dr. Dvorkin noted the February 12, 2003 employment injury and reported lateral knee joint tenderness and a lateral joint line cyst.

In a November 7, 2005 decision, the Office denied modification of the September 21, 2005 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of 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 filed within applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been

² 5 U.S.C. §§ 8101-8193.

³ *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004); *Elaine Pendleton*, 40 ECAB 1143 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Ellen L. Noble*, 55 ECAB ____ (Docket No. 03-1157, issued May 7, 2004); *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 3.

established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁵ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁶ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁷ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.⁸

ANALYSIS

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a traumatic injury to his left knee on July 23, 2003. There is no dispute that the July 23, 2003 incident occurred at the time, place and in the manner alleged. On that date, appellant was walking and delivering his mail route.

However, the Board finds that the medical evidence of record is insufficient to establish that appellant sustained an injury due to the accepted employment incident. In support of his claim, appellant submitted reports from Drs. Toney and Dvorkin. Dr. Toney diagnosed left knee pain and noted that appellant related a history of knee swelling on July 23, 2003. He diagnosed a diagnosis of knee pain but provided no opinion as to how this condition was caused or aggravated by appellant walking and delivering mail on July 23, 2003. In fact, Dr. Toney provided no opinion as to the cause of the condition. On August 14, 2003 Dr. Dvorkin diagnosed a subtle lateral meniscus tear based upon an MRI scan which was apparently obtained on March 5, 2003. The record contains other reports from Dr. Dvorkin written prior to the July 23, 2003 incident. As these reports were written before the July 23, 2003 incident, they are not probative to establish that appellant's knee was injured in the July 23, 2003 incident. The report of August 14, 2003 diagnosed a subtle meniscus tear. With regard to causal relationship, Dr. Dvorkin noted a "long history dating back to March with this work-related injury." He did not provide a specific and reasoned opinion on the cause of appellant's left knee condition or address how the left knee condition was caused or aggravated by the July 23, 2003 incident. Neither Dr. Toney nor Dr. Dvorkin provided a reasoned opinion explaining how the July 23, 2003 incident caused or aggravated appellant's left knee condition.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995); *see also Ellen L. Noble, supra* note 4.

⁶ *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

⁷ *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

⁸ *Charles E. Evans*, 48 ECAB 692 (1997).

Appellant submitted reports from Mr. Savin, a physician's assistant, who diagnosed left knee pain. This does not constitute probative medical evidence as a physician's assistant is not a physician under the Act.⁹

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.¹⁰ Causal relationship must be established by rationalized medical opinion evidence, and appellant failed to submit such evidence.¹¹

As there is no rationalized medical evidence of record establishing that appellant sustained a left knee condition while in the performance of duty as alleged, the Board finds that he has failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury while in the performance of duty on July 23, 2003.

⁹ 5 U.S.C. §§ 8101-8193; 8101(2).

¹⁰ *Kathryn E. Demarsh*, 56 ECAB ____ (Docket No. 05-269, issued August 18, 2005).

¹¹ *Frankie A. Farinacci*, 56 ECAB ____ (Docket No. 05-1282, issued September 2, 2005).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 7 and September 21, 2005 are affirmed.

Issued: May 5, 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