

**United States Department of Labor
Employees' Compensation Appeals Board**

K.W., Appellant)	
)	
and)	Docket No. 07-342
)	Issued: April 13, 2007
U.S. POSTAL SERVICE, SAVANNAH)	
PROCESSING & DISTRIBUTION FACILITY,)	
Savannah, GA, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 20, 2006 appellant filed a timely appeal from the September 14, 2006 decision of the Office of Workers' Compensation Programs' hearing representative affirming the Office's April 28, 2006 decision denying appellant's claim on the grounds that he failed to establish fact of 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 established that he sustained an injury in the performance of duty causally related to factors of his federal employment.

FACTUAL HISTORY

On February 6, 2006 appellant, a 38-year-old driver, filed an occupational disease claim, Form CA-2, alleging that he tore the meniscus in his right knee as a result of pushing and pulling overloaded and often defective containers over the uneven and sloping ground in the loading dock. He stated that these conditions caused great strain on his legs and knees, which led to the

wearing of the cartilage in his knee joints. On February 22, 2006 the employing establishment controverted appellant's claim on the grounds that he had not provided any factual details or medical evidence establishing how his condition was caused by his employment.

By letter dated March 10, 2006, the Office requested additional factual and medical information about appellant's employment duties and his claimed occupational disease. Appellant responded to this request on March 17, 2006. He stated that his knee condition arose as a result of pushing and pulling containers weighing over 1,000 pounds into and out of his truck. The pavement in the dock was uneven and his truck sat on an incline, requiring him to use his legs to hold the weight of the containers until they could be locked into place. Appellant stated that, due to the lack of an electric pallet jack in the dock area, he was also required to move pallets weighing up to 2,000 pounds. His duties as a dispatch truck driver in the bulk mail acceptance unit entailed moving several heavy pallets and containers under strict daily deadlines. Appellant stated that he gradually became aware of increasing pain in his knees and, around June 2005, began taking over-the-counter pain relief medication. On January 11, 2006 he went to the emergency room where he was diagnosed with a strained right knee and possible cartilage damage. Appellant had surgery on his knee on February 10, 2006. He stated that none of his activities outside of work put any strain on his knees.

By decision dated April 12, 2006, the Office denied appellant's claims on the grounds that he had not provided evidence sufficient to establish that he had sustained an employment-related injury. The Office accepted that the working conditions were as appellant had described, but found that there was no medical evidence connecting those conditions to appellant's claimed knee injury.

On April 14, 2006 the Office received a report submitted by appellant's treating physician, Dr. H. Clark Deriso, a Board-certified orthopedic surgeon, dated March 30, 2006. Dr. Deriso stated that appellant had undergone an arthroscopy for a flap tear of the medial meniscus of the right knee. He reported that appellant had experienced problems when loading and unloading his truck. Dr. Deriso stated: "A meniscus injury would probably fit a twisting injury while doing the work of loading and unloading. We will have to rely on the workplace and also the patient to determine exactly the onset of this work injury." He attached a draft copy of his operative report in which he provided a postoperative diagnosis of torn medial meniscus with chondrosis of the patella. In his patient progress notes, dated January 13 to March 27, 2006, Dr. Deriso noted that appellant had no history of injury, but may have twisted his knee while loading and unloading his truck at work. His examination on January 13, 2006 revealed tenderness in the posteromedial and medial joint line with pain on external rotation of the tibia against the femur. On January 31, 2006 Dr. Deriso noted that injections given on the previous visit had been largely ineffective and recommended arthroscopy, which was conducted February 10, 2006. Following the surgery, he stated that appellant was doing well, but reported some parapatellar pain and slight swelling of the knee.

On May 11, 2006 appellant requested a review of the written record. He also submitted a work order from the employing establishment requesting correction of the physical problems of the loading dock where he worked. On August 14, 2006 he submitted photographs of the loading dock renovations.

By decision dated September 14, 2006, the Office hearing representative affirmed the Office's previous decision. It found that the reports of Dr. Deriso drew only speculative connections between appellant's employment and his knee injury. The Office hearing representative also found that Dr. Deriso's opinions were devoid of rationalization.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 filed within the applicable time limitation; that an injury was sustained while 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

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;³ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁴ and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁵

When determining whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors, the Office generally relies on the rationalized opinion of a physician.⁶ To be rationalized, the opinion must be based on a complete factual and medical background of the claimant⁷ and must be one of reasonable medical certainty⁸ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

ANALYSIS

The Office has accepted that the work activity of pushing and pulling heavy containers and pallets over an uneven and slanted surface occurred as alleged. The issue to be resolved is

¹ 5 U.S.C. §§ 8101-8193.

² *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Solomon Polen*, 51 ECAB 341 (2000).

⁴ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁵ *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁶ *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

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

⁹ *Judy C. Rogers*, 54 ECAB 693 (2003).

whether this activity caused appellant's right knee injury. The Board finds that appellant has not provided sufficient medical evidence to establish that his knee condition is causally related to the accepted factors of his federal employment.

Dr. Deriso, a Board-certified orthopedic surgeon, diagnosed a torn medial meniscus with chondrosis of the patella in appellant's right knee. In a report made before he repaired the tear with arthroscopy, Dr. Deriso noted that appellant had no history of traumatic injury to his knee and may have twisted his knee when loading or unloading his truck at work. In a report dated March 30, 2006, he stated that appellant's condition would "probably fit a twisting injury while doing loading and unloading" but that he would have to rely on appellant and the employing establishment to "determine exactly the onset of his work injury." The Board finds that Dr. Deriso's opinion is equivocal and speculative as to the causal relationship between appellant's injury and his employment. While he connected the torn meniscus with the duties of loading and unloading a truck, his statements were couched in terms of "may have" and "probably." The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.¹⁰ Additionally, Dr. Deriso did not provide evidence that he was aware of appellant's employment duties or conditions; he left it to appellant and the employing establishment to determine how the injury could have occurred. The Board therefore finds that his opinion is not adequately rationalized.

As the record contains no other medical opinion evidence establishing a connection between appellant's employment and his diagnosed condition, appellant has failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant has not established that he sustained injury in the performance of duty causally related to factors of his federal employment.

¹⁰ *Ricky S. Storms*, 52 ECAB 349 (2001) (holding that, while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal but should rather be expressed in terms of a reasonable degree of medical certainty).

ORDER

IT IS HEREBY ORDERED THAT the September 14, 2006 decision of the Office of Workers' Compensation Programs' hearing representative and the April 12, 2006 Office decision are affirmed.

Issued: April 13, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board