United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 07-516**
	)	**Issued: August 16, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Mobile, AL, 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 December 14, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated October 18, 2006 which denied modification of an April 20, 2006 decision which found that he did not sustain an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), 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 January 27, 2006.

FACTUAL HISTORY

On February 28, 2006 appellant, then a 43-year-old automated flat sorting machine clerk, filed a traumatic injury claim (Form CA-1) alleging injury to his left leg on January 27, 2006 while he was lifting and loading mail. His left leg became fatigued and buckled. Appellant also

alleged that his ankle and knees showed swelling and his left knee had a large mass. He did not stop work. The employing establishment controverted the claim and continuation of pay.[1]

In a November 28, 2005 report, Dr. Charles T. Fletcher, a Board-certified orthopedic surgeon, indicated that he had treated appellant for a left ankle injury which he received at work on May 20, 2004. He had previously recommended restrictions for the left ankle and advised that appellant should not return to the mail sorting area. Dr. Fletcher also submitted an April 24, 2002 impairment rating from Dr. Roland Rivard, a Board-certified orthopedic surgeon.

In a January 30, 2006 report, Dr. W. Jonathan Dailey, Board-certified in internal medicine, noted that appellant had a "history of chronic knee and ankle problems." He opined that this was "aggravated by use of lifting and twisting (causing tortion on his knee or ankle)." Dr. Dailey advised that appellant should not use "automation machines which seem to aggravate this problem." He indicated that his findings were permanent absent new findings by his orthopedic surgeon.

In an e-mail correspondence dated February 16, 2006, Bill Johnston, an injury compensation specialist with the employing establishment, noted that he had a discussion with appellant regarding his restrictions. As they were discussing appellant's restrictions, it was determined that appellant was complaining about his left knee as opposed to his ankle, which became painful when he twisted it. Mr. Johnston advised appellant that he had the right to file a claim for an on-the-job injury related to the knee as this was not an ankle problem.

By letter dated March 7, 2006, Mr. Johnston controverted the claim. He alleged that appellant filed his claim more than 30 days after the claimed incident and did not list any witnesses despite having worked with two other employees at the sorting machine. He noted that neither employee recalled nor noticed anything and both coworkers indicated that appellant did not say anything at the time. Mr. Johnston also indicated that appellant's restrictions from his treating physician were unclear with regard to the machines that appellant could utilize.

On March 8, 2006 appellant advised the Office that he was trying to resolve issues related to his work assignment. He alleged that despite his restrictions, he was placed in a letter sorting area which was outside his restrictions.

On March 8, 2006 the Office also received a February 16, 2006 memorandum from the employing establishment explaining actions taken in relation to appellant's restrictions, photographs of machines at the employing establishment and a February 10, 2006 letter from the employing establishment to appellant's physician requesting his opinion regarding appellant's duties on the letter sorting machines.

[1] The record reflects that appellant has an accepted claim for a fracture of the left fibula and a left ankle sprain on September 4, 2001. Appellant received appropriate compensation, returned to work on August 16, 2002 in a modified-duty capacity, File No. 062042327. He sustained a second work-related injury on May 21, 2004, which was accepted for a left ankle sprain, File No. 06211522.

In a February 7, 2006 letter, appellant advised his supervisor that he was experiencing swelling and pain in his left ankle and knee while working on automated machines.

By letter dated March 13, 2006, the Office informed appellant of the evidence needed to support his claim and requested that he submit additional evidence within 30 days.

The Office then received an accident and an incident report, February 28, 2006 treatment notes from Southern Orthopedic advising that appellant's treatment was comprised of a magnetic resonance imaging (MRI) scan and a recommendation for light duty. In March 12, 2005 treatment notes, a physician whose signature is illegible, diagnosed left ankle pain.

In a February 28, 2006 treatment note, Dr. Donald F. Hodurski, a Board-certified orthopedic surgeon, noted that appellant had problems with the left knee and recommended an MRI scan.

In a March 21, 2006 report, Dr. Dailey noted that appellant's knee problems were comprised of "persistent difficulties with knee and ankle pain." He advised that appellant believed his condition was aggravated by his job duties. Dr. Dailey recommended a second opinion examination with an orthopedic surgeon.

The Office also received a March 31, 2006 response from appellant describing his duties and assignments.

By decision dated April 20, 2006, 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 sufficient to show that the claimed event occurred as alleged. However, the Office found that there was no medical evidence supporting that the accepted employment incident caused a diagnosed condition.

On June 15, 2006 appellant requested reconsideration and described the circumstances surrounding his injury and his left knee condition. He alleged that, with the exception of some left knee stiffness during his functional capacity evaluation in 2002, his only history of left knee problems was that of a cyst which was removed in 1992. Appellant attributed his pain to the bending, twisting and lifting that he was performing at work on an automated machine for letter mail. He also alleged that the weight of the tubs was five times that of a letter mail tray.

A May 1, 2006 MRI scan read by Dr. Delbert Hahn, a Board-certified diagnostic radiologist, revealed mild iliotibial band friction syndrome and a partial tear of the distal lateral collateral ligament with mild associated edema.

By letter dated October 3, 2006, appellant alleged that his supervisor, John A. Haley, left early on January 27, 2006, and that his injury occurred around 9:10 p.m. He stated that there were no other supervisors present to report his injury, but that he promptly reported the injury after returning to work on January 31, 2006. He also alleged that the letter sorting machine was being automated and that postal workers would no longer be required to perform the ledge loading function.

By decision dated October 18, 2006, the Office denied modification of its April 20, 2006 decision. The Office found that fact of injury was not established.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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[3] and that an injury was sustained in the performance of duty.[4] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

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.[6] 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.[7]

ANALYSIS

Appellant alleged that on January 27, 2006 he was lifting and loading mail at a letter sorting machine when his left leg became fatigued and buckled. The Board notes that appellant has several claims for prior ankle injuries and complained of problems related to his work restrictions. In an October 3, 2006 response, appellant alleged that on the date of his injury no supervisors were available and he promptly reported the injury after returning to work on January 31, 2006. In an e-mail correspondence dated February 16, 2006, Mr. Johnston indicated that he had a discussion with appellant regarding his claims and his work restrictions. It was determined that the complaints about the left knee should be considered separately from any ankle condition. Thereafter, appellant filed his claim on February 28, 2006. While the employing establishment alleged that there were no witnesses and a delay in filing the claim, the Board notes that there appeared to be some question as to whether the knee claim should be treated separately as a new claim. Once appellant was informed that he should file an additional claim, he filed a claim for his left knee condition. The Board finds that the first component of fact of injury, the claimed incident -- lifting and loading a letter sorting machine on January 27, 2006 occurred as alleged.

[2] 5 U.S.C. §§ 8101-8193.

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

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

[5] *Delores C. Ellyett*, 41 ECAB 992 (1990).

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

[7] *Id*.

However, the medical evidence is insufficient to establish the accepted employment incident caused an injury. The medical reports of record do not establish that the lifting and loading of the mail to the sorting machine caused a personal injury on January 27, 2006. The medical evidence contains no firm diagnosis, no explanation of the mechanism of injury regarding the employment incident on January 27, 2006, or statement of a physician addressing how appellant's left knee condition was caused or aggravated by the incident.[8]

In reports dated January 30 and March 21, 2006, Dr. Dailey merely noted that appellant had a "history of chronic knee and ankle problems" and opined that they were aggravated by his job duties. He noted that the conditions were "aggravated by use of lifting and twisting (causing tort on his knee or ankle)." While he recommended that appellant not use automation machines which seemed to aggravate this problem, he did not provide a specific opinion addressing whether any diagnosed condition was caused or aggravated by the lifting incident on January 27, 2006. The nature of any left knee condition cannot be determined by the physician's vague reference to prior chronic problems.

In a February 28, 2006 treatment note, Dr. Hodurski also noted that appellant had problems with the left knee. However, he did not provide a specific diagnosis or address the issue of causal relationship. Dr. Hodurski did not explain how the specific activity at work on January 27, 2006 caused or aggravated any injury.

Appellant also submitted diagnostic test results including a May 1, 2006 MRI scan from Dr. Hahn. However, he did not address the issue of the causal relationship. Dr. Hahn did not explain how appellant's January 27, 2006 incident at work caused or aggravated the diagnosed left knee conditions. Other reports submitted by appellant either predate the accepted incident or do not address the incident of January 27, 2006.

The medical reports submitted by appellant do not address how the January 27, 2006 incident caused or aggravated a left knee injury. These reports are of limited probative value[9] and are insufficient to establish that the January 27, 2006 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.[10]

[8] *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).

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

[10] The Board notes that appellant submitted evidence subsequent to the October 18, 2006 Office decision. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the October 18 and April 20, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 16, 2007
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