

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

D.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Lynn, MA, Employer**

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**Docket No. 07-1076
Issued: August 22, 2007**

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 March 13, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated November 27, 2006 and February 26, 2007 denying appellant's occupational disease claim. 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 has met his burden of proof in establishing that he sustained an injury in the performance of duty.

FACTUAL HISTORY

On September 3, 2006 appellant, a 47-year-old letter carrier, filed an occupational disease claim alleging that he developed advanced degenerative arthritis as a result of federal employment activities, including walking and climbing hills and stairs for five to seven hours per day, six days per week. He stated that he first became aware that his condition was caused or

aggravated by his employment in December 2002, but that the pain had been tolerable with medication until recently.¹

In a statement dated July 2, 2006, appellant indicated that he began experiencing joint pain in his right knee in October 1993, after carrying mail six days per week for seven years, having spent six hours of “street time” per day, walking and climbing hills and stairs. He underwent arthroscopic knee surgery on May 17, 1994. Appellant filed claims for work-related injuries which occurred on December 5, 1994 and November 26, 2002. Both claims were accepted for right knee sprain. In June 2005 appellant’s “knee started to really hurt.” He expressed his belief that his job as a letter carrier for 20 years, combined with two on-the-job right knee injuries, caused or aggravated his right knee condition to the point that a total right knee replacement was his only option.

Appellant submitted an August 21, 2006 report from Dr. John A. Kazes, a treating physician, who provided a diagnosis of severe degenerative arthritis of the right knee. Dr. Kazes noted that he had treated appellant for work-related injuries in 1994 and 2002, he stated that appellant’s advanced arthritic changes had led to a varus deformity of the knee that required knee arthroplasty. He opined that appellant’s arthritis was “certainly aggravated,” if not caused, by his injuries.

Appellant submitted treatment notes from Dr. Kazes for the period November 19, 1990 through April 19, 2006. On November 10, 1993 Dr. Kazes noted that appellant had experienced progressive right knee pain, noting that his duties as a mailman required him to walk great distances during the day. X-rays showed medial joint arthritis. On May 9, 1994 Dr. Kazes indicated that appellant had a history of right knee pain, as a result of an injury at age 16. Appellant underwent arthroscopic surgery for medial meniscectomy. On May 19, 2004 and June 20, 2005 Dr. Kazes diagnosed degenerative joint disease. X-rays revealed advanced arthritis of the right knee and examination showed a large Baker’s cyst. On February 15, 2006 appellant reported that, while at a cheerleading meet with his daughter, the pain in his right knee became so severe that he could no longer bear weight. Dr. Kazes stated that he had a varus knee due to severe arthritis. On April 19, 2006 he stated that appellant’s pain had progressively worsened and that he desired a total knee replacement.

Additional medical reports submitted by appellant included a May 17, 1994 operative report of an arthroscopy and partial medial and lateral meniscectomies performed by Dr. Kazes; an April 18, 1994 report of a magnetic resonance imaging (MRI) scan of the right knee; and a November 26, 2002 report from Dr. Dieter Affeln, Board-certified in the field of preventive medicine, reflecting that appellant sustained a right knee injury at work on November 25, 2002 and was suffering from mild osteoarthritis.

By letter dated September 13, 2006, the Office informed appellant that the information submitted was insufficient to establish his claim. The Office advised him to submit a rationalized medical report from his physician, providing a diagnosis, history of treatment and an

¹ Appellant filed two previous traumatic injury claims in December 1994 (File No. 012036978) and November 2002 (File No. 012013002) that were accepted for right knee strain.

opinion with medical reasons as to how his diagnosed condition was causally related to factors of his employment.

By decision dated November 27, 2006, the Office denied appellant's claim, finding that the medical evidence of record did not demonstrate that his claimed condition was causally related to the established work-related events.

On November 28, 2006 appellant, requested reconsideration. He submitted a November 21, 2006 report from Dr. Kazes, who stated that appellant had suffered from degenerative arthritis of the knees since 1993. At that time an MRI scan showed evidence of an old tear of appellant's anterior cruciate ligament, degenerative changes and a torn medial meniscus. He ultimately underwent arthroscopic surgery. Appellant continued to work, bearing weight. Dr. Kazes noted that appellant "ambulate[d] great distances and applie[d] three to five times their body weight across the knee joint, and this exacerbated his symptoms of degenerative arthritis of the knee." He stated that he did not believe that appellant's condition was caused by his employment as a mail carrier, but opined that his many years of weight bearing with an arthritic knee exacerbated his symptoms.

By decision dated February 26, 2007, the Office denied modification of its November 27, 2006 decision. The Office found that the medical evidence was insufficient to establish a causal relationship between appellant's diagnosed condition and established work-related events.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing 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 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 upon a traumatic injury or an occupational disease.⁴

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; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

An award of compensation may not be based on appellant's belief of causal relationship. 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

ANALYSIS

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 or her 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.⁷ 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.⁸

Dr. Kazes opined that appellant's work activities as a mail carrier, which included ambulating great distances and weight bearing with an arthritic knee for many years, exacerbated his symptoms of degenerative arthritis of the knee. Having treated appellant since 1993, Dr. Kazes gave a complete history of appellant's condition. He reflected an understanding of appellant's job requirements and the nature of his job duties. Dr. Kazes addressed results of MRI scans and x-rays, discussed previous arthroscopic surgery and opined that appellant's advanced arthritic changes had led to a varus deformity of the knee that required knee arthroplasty.

⁵ *Id.*

⁶ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁷ *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).

⁸ *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, *supra* note 7; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

The Board notes that, while none of the reports submitted by appellant is completely rationalized, they are consistent in indicating that he sustained a knee condition that was aggravated by conditions of his employment. Moreover, they are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet appellant's burden of proof to establish his claim, they raise an uncontroverted inference between his claimed condition and the accepted employment factors and are sufficient to require the Office to further develop the medical evidence and the case record.⁹

On remand the Office should prepare a statement of accepted facts and refer appellant, along with his medical records, for a second opinion examination, in order to obtain a rationalized opinion as to whether his current diagnosed condition is causally related to factors of his employment, either directly or through aggravation, precipitation or acceleration.

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.

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2007 and November 27, 2006 decisions of the Office of Workers' Compensation Programs are set aside and remanded for further development consistent with this decision.

Issued: August 22, 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

⁹ See *Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, supra note 7; see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).