United States Department of Labor
Employees' Compensation Appeals Board

M.G., Appellant	)	
and	)	**Docket No. 07-775**
	)	**Issued: July 12, 2007**
U.S. POSTAL SERVICE, POST OFFICE, South Bend, IN, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 29, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated October 27, 2006, denying his request for further merit review of his claim and a September 1, 2006 decision finding that he failed to establish that he sustained an injury as alleged. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the issues in this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty, causally related to factors of his federal employment; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 6, 2006 appellant, then a 64-year-old mail handler, filed an occupational disease claim alleging that he sustained pain and swelling of the left knee due to heavy lifting, twisting,

pushing and pulling of equipment weighing in excess of 1,000 pounds.[1] He first became aware of the injury and its relation to his work on May 29, 2006. Appellant did not stop work.

Appellant submitted a statement in which he noted an August 14, 2005 work-related injury to his left knee for a sprain/strain. He alleged that while he was released to full duty, he continued to have painful episodes, which subsided after taking over the counter medications. Appellant alleged that on May 30, 2006, he experienced "considerable pain in the left knee due primarily to the repetitive and physically stressful nature of [his] job." He alleged that his duties "included driving a tow motor and forklift eight hours a day." Appellant was required to push and pull heavy containers of mail, weighing in excess of a thousand pounds. He noted that, a week earlier, he was placed in a job related to breaking down flats, which required him to twist and lift more than his normal position. Appellant believed that this aggravated his left knee condition.

Dr. John P. Eichorst, an osteopath, examined appellant on June 5, 2006 for left knee pain, which was related to a left knee strain at work in August 2005. Dr. Eichorst diagnosed a strained and possibly torn left medial collateral ligament of the left knee. In a June 6, 2006 duty status report, he, diagnosed knee strain and chondromalacia and prescribed restrictions for work. The employing establishment provided appellant with a June 9, 2006 limited-duty assignment.

By letter dated June 21, 2006, the Office advised appellant that additional factual and medical evidence was needed. The Office explained that a physician's opinion on causal relationship was crucial to his claim and allotted appellant 30 days within which to submit the requested information.

In a July 10, 2006 report, Dr. John Halstead, a Board-certified orthopedic surgeon, indicated that appellant underwent arthroscopic evaluation of the knee with debridement of the medial and lateral menisci. Dr. Halstead noted operative findings of severe arthritis of the patellofemoral joint, lesser degrees of arthritis in the medial and lateral compartments and evidence of crystal deposits and pseudogout. He advised that appellant was recovering and recommended exercise. Dr. Halstead opined that it was "entirely reasonable that his cartilage tears are as a result of his work-related injury; however, the arthritis in his knee and the pseudogout are not work related." The Office also received various physical therapy reports.

By decision dated September 1, 2006, the Office denied appellant's claim. It found that the evidence supported that the claimed work events occurred; however, appellant failed to submit the necessary medical evidence in support of his claim. The Office noted that the medical evidence did not explain how appellant's diagnosis was causally related to employment factors.

In an August 29, 2006 report, Dr. Halstead repeated his previous findings, which included that appellant had a torn medial meniscus of the left knee. He opined that this was "directly related to his injury at work on August 14, 2005." Dr. Halstead added that appellant had degenerative arthritis and chondromalcinosis, which were not work related. He advised that

[1] The record reflects that appellant has a separate traumatic injury claim which is accepted for a left knee sprain on August 14, 2005. File No. 092063425.

it was too soon to provide an impairment rating. In a September 5, 2006 report, Dr. Halstead opined that appellant had five percent permanent impairment of the left lower extremity.

On September 25, 2006 the Office received appellant's request for reconsideration. Appellant alleged that the Office had not received all of the medical evidence at the time of the September 1, 2006 decision denying his claim. He informed the Office that he was submitting Dr. Halstead's report.

By decision dated October 27, 2006, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that his request neither raised substantial legal questions nor included new and relevant evidence and, thus, it was insufficient to warrant review of its prior decision.[2]

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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, 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.[4] 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.[5]

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. 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

[2] The Office advised appellant that it appeared that the issues surrounding his current claim might be considered as consequential to his accepted claim. The Office advised appellant that he could submit any further medical evidence to support an expansion of his accepted traumatic injury claim.

[3] 5 U.S.C. §§ 8101-8193.

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

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6]

ANALYSIS -- ISSUE 1

The Office found that appellant had established the work-related events, such as heavy lifting, twisting and pulling of equipment weighing in excess of 1,000 pounds; in the performance of his work as a mail handler. However, appellant submitted insufficient medical evidence to establish that his left knee condition was caused or aggravated by the activities of his federal employment.

In reports dated June 5 and 6, 2006, Dr. Eichorst diagnosed a strain of the left knee and chondromalacia. He opined that it was related to a left knee strain at work in August 2005. However, appellant alleged that he first became aware of his left knee and its relation to his employment on May 29, 2006 and attributed his injury to his duties as a mail handler, which involved pushing and pulling containers and heavy lifting. Dr. Eichorst did not discuss any of appellant's employment duties or offer any opinion explaining how performing these duties caused or aggravated appellant's left knee condition.[7] Thus, these reports are of diminished probative value.

On July 10, 2006 Dr. Halstead determined that appellant had severe arthritis of the patellofemoral joint, lesser degrees of arthritis in the medial and lateral compartments and evidence of crystal deposits and pseudogout. He opined that it was "entirely reasonable that his cartilage tears are as a result of his work-related injury; however, the arthritis in his knee and the pseudogout are not work related." The record indicates that Dr. Halstead was referring to the August 2005 injury. Furthermore, to the extent he was referring to appellant's current claim, he did not provide any explanation as to causal relation. Dr. Halstead did not describe the work factors of appellant's employment or explain how the work duties he performed as a mail handler caused or contributed to the diagnosed left knee conditions. A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship that is unsupported by medical rationale.[8]

The Office also received numerous physical therapy reports. However, healthcare providers such as physical therapists are not physicians under the Act. Thus, their opinions do not constitute medical evidence and have no weight or probative value.[9]

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[6] *Id.*

[7] The Board notes that Dr. Eichorst offered support related to appellant's August 2005 employment injury; however, that claim is not before the Board.

[8] *Robert S. Winchester*, 54 ECAB 191 (2002).

[9] *See Jan A. White*, 34 ECAB 515, 518 (1983). *See* 5 U.S.C. § 8101(2). This subsection defines the term "physician." *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[10] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

As there is insufficient medical evidence explaining how appellant's employment duties caused or aggravated his left knee condition, he has not met his burden of proof in establishing that he sustained a medical condition in the performance of duty causally related to factors of his employment.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,[12] the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulation, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, set forth arguments and contains evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
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> "(ii) Advances a relevant legal argument not previously considered by the Office; or
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> "(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office]."[13]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[14]

ANALYSIS -- ISSSUE 2

Appellant disagreed with the denial of his claim for an occupational disease and requested reconsideration on September 25, 2006. The underlying issue on reconsideration was whether appellant established that he sustained an occupational disease on or about May 29,

[10] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[11] *Id.*

[12] 5 U.S.C. § 8128(a).

[13] 20 C.F.R. § 10.606(b).

[14] 20 C.F.R. § 10.608(b).

2006 in the performance of duty. However, he did not provide any relevant or pertinent new evidence to the issue of whether he sustained an occupational disease in the performance of duty.

In support of his September 25, 2006 request for reconsideration, appellant alleged that the Office did not receive his physician's report at the time of its denial of his claim. He enclosed an August 29, 2006 report from Dr. Halstead, who repeated his previous findings and opined that appellant's condition was "directly related to his injury at work on August 14, 2005." However, Dr. Halstead's opinion is not relevant to the underlying issue in this case as he attributed appellant's condition to a prior accepted injury that is part of a separate claim. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[15]

In a September 5, 2006 report, Dr. Halstead opined that appellant was entitled to a five percent permanent impairment of the left lower extremity. However, the underlying issue in this claim concerns the issue of causal relationship and not a schedule award. This report does not offer any opinion regarding appellant's occupational disease claim. As noted above, the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[16]

Appellant did not provide any relevant and pertinent new evidence to establish that he sustained an occupational disease in the performance of duty.

Consequently, the evidence submitted by appellant on reconsideration does not satisfy the third criterion, noted above, for reopening a claim for merit review. Furthermore, appellant also has not shown that the Office erroneously applied or interpreted a specific point of law or advanced a relevant new argument not previously submitted. Therefore, the Office properly denied his request for reconsideration.

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. The Board also finds that Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

[15] *Robert P. Mitchell*, 52 ECAB 116 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Alan G. Williams*, 52 ECAB 180 (2000).

[16] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 27 and September 1, 2006 are affirmed.

Issued: July 12, 2007
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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