

Board-certified orthopedic surgeon. He indicated that a narrative statement regarding the causal relationship between his claimed condition and employment accompanied his claim.

By letter dated July 19, 2006, the Office requested that the employing establishment provide comments in response to appellant's claim and a description and physical requirements of his former position. In a letter of the same date, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It addressed the factual and medical evidence he needed to submit within 30 days to establish his claim. This included a detailed description of the employment-related activities that he believed contributed to his condition and a comprehensive medical report from his physician which described his symptoms and included results of examinations and testing and provided a diagnosis and opinion with medical reasons, on the cause of his condition.

On July 24, 2006 appellant telephoned the Office regarding the July 19, 2006 letter. The Office advised him that no evidence was contained in his case file as of July 24, 2006. On July 28, 2006 appellant called the Office to verify its receipt of his documents. The Office informed him that no documents had been received or scanned into his case file.

By letter dated August 1, 2006, the employing establishment controverted appellant's claim. It reviewed medical evidence received from appellant and contended that this evidence did not establish that his claimed left knee condition was work related. It further contended that the claimed condition was due to his obesity and the natural aging process.

In a July 27, 2006 letter, Bill Brown, a customer services supervisor, stated that when he started work in September 2004, appellant was performing light-duty work which he continued to perform for the remainder of his career. Appellant returned to his route assignment shortly before his retirement. Mr. Brown stated that this route was a mixture of curb line boxes and dismount deliveries. It consisted mainly of business deliveries with just a small percentage of residence boxes. Mr. Brown did not recall appellant's casing volume or the time required to case mail. He disputed appellant's contention that he cased mail for three hours. Mr. Brown believed that the casing time was closer to two hours a day which meant that appellant spent approximately six hours on his route. He noted that during this time, appellant would make quite a few dismounts and walk to deliver his mail. Mr. Brown did not know of any outside hobbies or interest that could have contributed to appellant's knee problems.

The employing establishment submitted a description of appellant's rural carrier position. The duties and responsibilities included:

- "1. Sorts mail in delivery sequence for the assigned route.
- "2. Receives and signs for accountable mail.
- "3. Loads mail in a vehicle.
- "4. Delivers mail to customers along a prescribed route and on a regular schedule by vehicle; collects monies and receipts for accountable mail; picks up mail from customers' roadside boxes.

“5. Sells stamps, stamped paper and money orders, accepts C.O.D., registered, certified and insured mail and parcel post; furnishes routine information concerning postal matters and provides requested forms to customer.

“6. Returns mail collected, undeliverable mail and submits monies and receipts to [the employing establishment].

“7. Prepares mail for forwarding and maintains records of change of address information.

“8. Prepares a daily trip report and maintains a list of the customers on the route.

“9. Conducts special surveys when required.

“10. Maintains an inventory of stamps and stamped paper as needed to provide service to customers on the route.

“11. Provides for mail security at all times.”

The employing establishment also submitted Dr. Hitt's January 3, 2006 medical report. Dr. Hitt reviewed appellant's x-rays and found that he sustained bilateral compartment osteoarthritis of the knees and genu varum deformity.² In a May 9, 2006 report, Dr. Hitt stated that appellant was status post successful rotator cuff surgery. Appellant had advanced medial compartment osteoarthritis of the knee. Dr. Hitt noted that appellant required bilateral knee replacement due to advanced medial compartment degenerative changes. He stated that, although one of appellant's knees was related to workers' compensation and the other was not, his work was clearly a contributing factor of appellant's existing arthritis. Dr. Hitt indicated that both knees would need to be replaced at some point. He opined that there was a relationship between appellant's previous employment and his current arthritic problems.

An August 24, 2004 operative report of Dr. Derek K. Lichota, a Board-certified orthopedic surgeon, indicated that he performed arthroscopy, a partial medial meniscectomy, abrasion chondroplasty medial femoral condyle and chondroplasty trochlea on appellant's left knee. Appellant's preoperative diagnoses were torn medial meniscus and degenerative joint disease of the left knee. His postoperative diagnoses included a large posterior horn medial meniscus, Grade 4 medial femoral condyle and medial tibial plateau changes and Grade 2 trochlea changes.

Reports dated September 1 and 8, 2004 from Teresa Motlenberry, a physical therapist, indicated that appellant was treated for left knee problems.

By decision dated August 28, 2006, the Office found that appellant did not sustain an injury while in the performance of duty. Appellant failed to submit the requested evidence. The decision was mailed to him at his address of record.

² A January 3, 2006 x-ray report of Dr. Linda M. Parman, a Board-certified radiologist, stated that appellant had progressive osteoarthritis with interval resolution of capsular distention in the left knee.

On November 29, 2006 appellant requested reconsideration. He stated that he had submitted medical reports and documentation regarding his alleged left knee injury with his occupational disease claim. On August 16, 2006 appellant was advised by the Office that his claim had not been approved or disapproved by that date and that the Office would call him when a decision was made, with a copy of the decision mailed to him. He contended that he never received the Office's August 28, 2006 decision. He stated that his physician's letter was mailed to the Office in San Antonio, Texas in June 2006. The Office informed him that this evidence was not in its computer and recommended that he resubmit it.

By decision dated January 18, 2006, the Office denied modification of its August 28, 2006 decision. It found that the medical evidence of record was insufficient to establish that appellant sustained a medical condition causally related to factors of his employment. The decision was mailed to appellant at his address of record.³

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁴ 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.⁵ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

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 a causal relationship 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

³ The Board notes that appellant submitted evidence with his appeal to the Board. The Board, however, cannot consider this evidence 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).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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.⁷ Neither the fact that appellant's condition became apparent during a period of employment nor his belief that the condition was caused by his employment is sufficient to establish a causal relationship.⁸

ANALYSIS

Appellant alleged that he sustained a left knee injury while working as a letter carrier for the employing establishment. The record is not in dispute as to appellant's job duties as a letter carrier. Mr. Brown, an employing establishment supervisor, stated that appellant's route was a mixture of curb line boxes and dismount deliveries. It consisted mainly of business deliveries with a small percentage of residence boxes. Mr. Brown recalled that appellant cased mail approximately two hours a day which meant that he spent approximately six hours on his route. During this time, appellant made quite a few dismounts and walked to deliver his mail. Appellant's rural carrier position description stated that he was required to, among other things, sort mail for delivery, load mail into a vehicle to be delivered to customers on his route, pick up mail from customers' roadside boxes and return mail collected and undeliverable mail. The Board finds that appellant's occupational claim has established those factors he alleges contributed to his left knee condition.

The Board finds, however, that appellant did not submit sufficient medical evidence to establish that his left knee condition was caused by the accepted employment factors. Dr. Hitt's reports noted that appellant sustained bilateral compartment osteoarthritis of the knees. He did not address whether the diagnosed condition was due to appellant's job duties as a letter carrier.

Dr. Lichota's operative report stated that appellant's postoperative diagnoses were a large posterior horn medial meniscus, Grade 4 medial femoral condyle and medial tibial plateau changes and Grade 2 trochlea changes is insufficient to establish appellant's claim. However, he did not address whether the diagnosed conditions were due to the accepted factors of appellant's employment.

The September 1 and 8, 2004 reports from Ms. Motlenberry, appellant's physical therapist, do not constitute probative medical evidence as a physical therapist is not a "physician" as defined under the Act.⁹

⁷ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁸ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

⁹ 5 U.S.C. §§ 8101-8193; 8101(2); *Vickey C. Randall*, 51 ECAB 357, 360 (2000) (a physical therapist is not a physician under the Act).

Appellant has not submitted rationalized medical evidence establishing that he sustained a left knee injury causally related to the accepted factors of his employment. He has failed to meet his burden of proof.¹⁰

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2007 and August 28, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 19, 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

¹⁰ Both before the Office and on appeal to the Board, appellant contended that he did not receive a copy of the Office's August 28, 2006 decision. The Board has held that, in the absence of evidence to the contrary, it is presumed that a notice mailed to an individual in the ordinary course of business was received by that individual. *See Joseph R. Giallanza*, 55 ECAB 186 (2003). Under the mailbox rule, evidence of a properly addressed letter together with evidence of proper mailing may be used to establish receipt. *See Larry L. Hill*, 42 ECAB 596 (1991); *George F. Gidicsin*, 36 ECAB 175 (1984). The Office sent appellant the August 28, 2006 decision to his last known address. Since there is no evidence to rebut the presumption of receipt by appellant under the mailbox rule, the Board finds that appellant is deemed to have received the decision.