United States Department of Labor
Employees' Compensation Appeals Board

K.P., Appellant	)	
and	)	**Docket No. 07-333**
	)	**Issued: March 23, 2007**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, West Roxbury, MA, 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 12, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 1, 2005 merit decision, denying his traumatic injury claim and its June 13, 2006 nonmerit decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a traumatic injury on July 6, 2005 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 pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 3, 2005 appellant, a 48-year-old pipefitter, filed a traumatic injury claim (Form CA-1) alleging that he injured his left knee while working on July 6, 2005. He stated that he developed a sharp pain in his left knee after repairing a sink, which required him to work on his knees.

In support of his claim, appellant submitted numerous reports from "Boston HCS" outpatient department, including triage notes, nursing notes, physician's progress notes, radiology reports, physical therapy progress notes and consult notes, all of which were electronically signed. In urgent care notes dated July 6, 2005, Denise M. Perron, a nurse practitioner, noted appellant's report that he had developed severe pain and swelling in his left knee while at work, performing his usual chores. An April 21, 2005 report of an x-ray of both knee joints showed no acute fractures or dislocations, with a tiny density at the medial aspect of the left knee joint on the anterior posterior, which could be secondary to prior trauma. In a July 6, 2005 report of an x-ray of appellant's left knee, Dr. Stephen G. Gerzof, a Board-certified radiologist, noted no significant change since April 21, 2005. The x-ray revealed an ill-defined, faintly calcified 6.5 millimeter density projected over the medial aspect of the knee joint. In July 12, 2005 nursing notes, Ms. Perron indicated that appellant was experiencing left knee pain and swelling of questionable etiology. The record contains a July 23, 2005 report of a magnetic resonance imaging (MRI) scan of the left lower extremity. In progress notes dated July 26, 2005, Dr. Michael J. Tierney, a Board-certified internist, stated that appellant's left knee was tender to the touch, mostly on the medial side. He reported that appellant had massive edema of both lower extremities, as well as minimal degenerative joint disease-type changes in his knees, as reflected by x-ray. In August 2, 2005 outpatient care notes, Ms. Perron noted appellant's persisting left knee pain. She indicated that an MRI scan had revealed evidence of a torn medial meniscus and prepatellar bursitis. In August 2, 2005 progress notes, Dr. Gerzof reported that appellant's MRI scan showed a complex left medial meniscal tear and prepatellar bursitis.

The record contains August 4, 2005 notes of an orthopedic consultation, signed by Dr. Benjamin Schwartz, a Board-certified internist, and Dr. Tamara L. Martin, a Board-certified orthopedic surgeon. The notes reflected appellant's reported history of left knee pain since July 6, 2005. Appellant stated that he did not recall any specific incident when he injured his left knee, but that he had been experiencing pain since repairing a sink at work. Examination of the left lower extremity revealed diffuse 1+ pitting edema from about the level of the calf to the ankle; mild effusion of the knee joint; and a positive patellar grind test. Dr. Schwartz found the knee grossly stable to varus and valgus testing at 0 and 30 degrees of flexion. Appellant reported results of appellant's MRI scan, which revealed a complex tear of the posterior horn of the medial meniscus. X-rays showed mild osteoarthritis of the right knee, with the left knee looking normal, but for some chondrocalcinosis of the medial meniscus.

The record contains an August 17, 2005 preoperative anesthesia assessment by Dr. Santa N. Brouwer, a treating physician, who noted that appellant's previous medical history included massive lymphedema in both lower extremities since his service in the military.

In progress notes dated August 18, 2005, Dr. Martin reported that appellant was scheduled to undergo a left knee arthroscopy with partial meniscectomy, to repair a complex tear of the posterior horn of the medial meniscus. She reiterated appellant's report that, although he had experienced knee pain since July 6, 2005, when he repaired a sink at work, he could not remember any specific incident when he injured his left knee.

On September 14, 2005 the Office notified appellant that the evidence submitted was insufficient to establish his claim and advised him to provide additional documentation, including a physician's report containing a specific diagnosis and an opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury. The Office asked appellant to provide a detailed description of how his injury occurred.

Appellant submitted new and previously submitted medical records from West Roxbury Veterans Administration for the period July 6 through October 6, 2005. Newly submitted medical evidence included an August 26, 2005 surgical report from Dr. Martin, reflecting that she performed a left knee arthroscopy and partial meniscectomy on that date. The record contains August 26, 2005 discharge instructions; consult requests regarding appellant's chronic lymphedema; September 7, 2005 progress notes from Dr. Martin; and progress notes dated September 15 and 22, 2005 from Dr. Nancy Cantelmo, a Board-certified vascular surgeon, reflecting appellant's continuing problems with his chronic lymphedema. In October 6, 2006 progress notes, Dr. Martin observed that appellant was doing well following his arthroscopic surgery, but that recovery had been complicated by vascular issues.

On September 22, 2005 appellant responded to the Office's request for a detailed description as to how his injury occurred. He stated that he felt pain in his left knee after bending, kneeling and twisting in different positions.

By decision dated December 1, 2005, the Office denied appellant's claim on the grounds that the evidence failed to establish that appellant had sustained an injury in the performance of duty. The Office accepted that the claimed event occurred, namely, that appellant was working on his knees fixing a sink. However, the Office found that the medical evidence submitted was insufficient to establish that the claimed medical condition was causally related to the accepted work-related incident.

On April 17, 2006 appellant requested reconsideration. In support of his request, he submitted copies of previously submitted medical reports. Appellant also submitted consult request forms for items related to his chronic lymphedema.

By decision dated June 13, 2006, the Office denied appellant's request for reconsideration, finding that he had failed to raise substantive legal questions or submit new and relevant evidence sufficient to warrant a merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of proof to establish the essential elements of the 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 or specific condition for which compensation is claimed is causally related to the employment injury.[1] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," namely, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged and that such event, incident or exposure caused an injury.[2]

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 employment.[3] Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[4]

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.[5]

ANALYSIS -- ISSUE 1

The Office accepted that appellant was a federal employee, that he timely filed his claim for compensation benefits and that the workplace incident occurred as alleged. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident is causally related to appellant's diagnosed condition. Therefore, appellant has failed to satisfy his burden of proof.

Appellant submitted numerous reports from "Boston HCS" outpatient department, including triage notes, nursing notes, physician's progress notes, radiology reports, physical therapy progress notes, consult notes and surgical reports. However, none of these reports

[1] *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

[2] *Betty J. Smith*, 54 ECAB 174 (2002); *see also Tracey P. Spillane*, 54 ECAB 608 (2003). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

[3] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[4] *John W. Montoya*, 54 ECAB 306 (2003).

[5] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

offered any opinion on the cause of appellant's condition. Medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[6] Dr. Martin's reports establish that appellant had a complex tear of the posterior horn of the medial meniscus, for which he underwent a left knee arthroscopy with partial meniscectomy. The record reflects appellant's report to Dr. Martin that he did not recall any specific incident when he injured his left knee, but that he had been experiencing pain since repairing a sink at work on July 6, 2005. However, the record does not contain an opinion by Dr. Martin or by any other qualified physician, supporting appellant's contention that his left knee condition was causally related to the accepted employment activity. While appellant has submitted chart notes and other medical documents which track his treatment, he has not provided a narrative report containing a physician's rationalized opinion on whether there is a causal relationship between his diagnosed condition and the established incident. No physician has explained how appellant's knee condition was physiologically related to the July 6, 2005 work incident. The Board notes that appellant submitted reports signed by nurses, nurse practitioners and physical therapists. As these reports were not signed by individuals that qualify as "physicians" under the Act, the Board finds that they do not constitute probative medical evidence.[7]

Appellant expressed his belief that his knee condition resulted from the July 6, 2005 employment incident. 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.[8] 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.[9] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by the work-related injury is not determinative.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how appellant's claimed knee condition was caused or

[6] *Michael E. Smith*, 50 ECAB 313 (1999).

[7] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as "physician" as defined in 5 U.S.C. § 8101(2). [Section] 8101(2) of the Act provides as follows: "'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by [x]-ray to exist and subject to regulation by the secretary." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

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

[9] *Id.*

aggravated by his employment, appellant has not 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.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act, the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulation,[10] which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, which sets forth arguments and contains evidence that:

> "(1) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
>
> "(2) Advances a relevant legal argument not previously considered by the (Office); or
>
> "(3) Constitutes relevant and pertinent new evidence not previously considered by [the Office]."

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.[11]

Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[12]

ANALYSIS -- ISSUE 2

Appellant's April 17, 2006 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

Subsequent to the Office's December 1, 2005 decision, appellant submitted numerous copies of previously submitted documents. The Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.[13] Appellant also submitted consult request forms for items related to his chronic lymphedema. In its December 1,

[10] 20 C.F.R. § 10.606(b).

[11] *Id.*

[12] *See Helen E. Paglinawan*, 51 ECAB 591 (2000).

[13] *See Manuel Gill*, 52 ECAB 282 (2001).

2005 decision, the Office determined that appellant had failed to submit a rationalized medical opinion explaining the causal relationship between his diagnosed meniscal tear and the accepted work injury. As the documents submitted by appellant do not address the issue at hand, they are irrelevant. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

As appellant has failed to meet any of the standards under section 8128(a) of the Act which would require the Office to reopen the case for merit review, the Board finds that the Office did not abuse its discretion in denying his request for reconsideration.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a traumatic injury on July 6, 2005 causally related to his employment. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 13, 2006 and December 1, 2005 are affirmed.

Issued: March 23, 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