United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant **and** **U.S. POSTAL SERVICE, POST OFFICE, Knoxville, TN, Employer**	)	**Docket No. 07-1509** **Issued: November 2, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 7, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated March 23, 2007 which affirmed the denial of his claim. Under 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 established that he sustained an injury to his right knee in the performance of duty on July 30, 2004.

FACTUAL HISTORY

Appellant, a 45-year-old processing clerk, filed a Form CA-1 claim for benefits on July 30, 2004 alleging that he experienced pain in his left knee[1] while lifting trays of mail.

[1] Appellant subsequently asserted that he had actually injured his right knee and had erred by initially stating on the claim form that he had injured his left knee. This correction was not challenged by the employing establishment or the Office.

By decision dated September 14, 2004, the Office denied the claim finding that appellant failed to submit medical evidence in support of his claim. It noted that he failed to submit medical evidence providing a diagnosis resulting from the July 30, 2004 work incident.

On September 29, 2004 appellant requested an oral hearing which was held on April 20, 2005. In an August 18, 2004 report, Dr. Leonard F. Bellingrath, a specialist in family practice, noted appellant's complaints of worsening pain in the mornings for the previous three weeks. He advised that he had low back pain in addition to popping in the right knee. Dr. Bellingrath stated that appellant also experienced occasional catching in his right knee. He diagnosed lumbar strain, possible knee strain and cartilage tear.

In a report dated November 5, 2004, Dr. Thomas I. Anderson, a Board-certified family practitioner, stated that appellant noticed a popping in his right knee and experienced difficulty walking down steps. Dr. Anderson noted a very mild effusion in appellant's right knee as compared to the left knee. He stated that x-rays taken of the knee showed no intra-articular foreign bodies and no appreciable degree of osteoarthritic change. Dr. Anderson scheduled appellant for a magnetic resonance imaging (MRI) scan of his left knee.

In a November 16, 2004 report, Dr. Anderson noted that the MRI scan results showed an extensive complex tear of the medial meniscus, mild chondromalacia and a small meniscal cyst posteriorly, with small knee joint effusion.

By decision dated July 18, 2005, an Office hearing representative affirmed the September 14, 2004 decision.

Appellant requested reconsideration. In a September 21, 2005 report, Dr. Anderson stated:

> "[Appellant] suddenly, while bending and flexing his knee to pick something up felt a pop in his right knee. It became progressively sore and he was using his knee excessively over what he ordinarily does because of his back strain. This happened on July 30[, 2004] at 6:30 p.m. while he was at work. [Appellant] filled out an accident report at that time after speaking to his supervisor, but filled out the accident form indicating that it was the left knee and not the right by mistake.
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> "[Appellant] went back to work on Monday the following week thinking that things would gradually get better.... However his knee on the right side kept popping and he could not only hear it, but he could also feel it and the pain more or less stayed in the knee, but he was able to function with it.
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> "On October 31[, 2004] when he was [bending] to pick something up his knee popped and it was suddenly much worse than it was previously. [Appellant] came to see me on November 5, 2004 and x-rays were taken of the right knee and also we scheduled [her] for an MRI [scan]. Unfortunately the radiologist originally read this MRI [scan] and labeled it as his left knee, but in fact corrected the report later that day and stated that the MRI [scan] was of his right knee. The report did

show that he had an extensive complex tear involving most of the medial meniscus of that right knee. [Appellant] was subsequently referred [for] surgery and [he] is now free of knee pain, free of other symptoms regarding his back and his [k]nee and is doing quite well.

> "I believe that [appellant] has sustained a very legitimate injury to his right knee on July 30, 2004 as he describes and this was while he was work[ing] at the [employing establishment]."

By decision dated June 12, 2006, the Office denied modification of the July 18, 2005 decision.

By letter dated September 15, 2006, appellant requested reconsideration.

By decision dated September 27, 2006, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

By letter dated October 23, 2006, appellant requested reconsideration. He submitted an August 29, 2006 report from Dr. Anderson, who stated:

> "Please see the history and examination that I reviewed on [appellant] on September 21, 2005. I believe in that history and summation that [his] knee injury occurred at his place of employment on July 30, 2004. [Appellant's] injury was aggravated on October 31, 2004 and I believe the injuries are directly related, should be [compensable]."

By decision dated November 14, 2006, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

By letter dated December 20, 2006, appellant requested reconsideration.

By decision dated March 23, 2007, the Office denied modification of its prior decisions.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing that 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.[3] These are the essential

[2] 5 U.S.C. §§ 8101-8193.

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

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

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.[5] 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.[6] The medical evidence required to establish causal relationship is usually rationalized medical 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.[7]

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]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[9] Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

The Office accepted that appellant experienced left knee pain while lifting mail trays on July 30, 2004. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.[10] Appellant has not submitted rationalized, probative medical evidence to establish that the July 30, 2004 employment incident caused a personal injury.

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

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

[6] *Id.* For a definition of the term "injury," *see* 20 C.F.R. § 10.5(a)(14).

[7] *Id.*

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

[9] *Id.*

[10] *John J. Carlone*, *supra* note 5.

Drs. Bellingrath and Anderson stated findings on examination and indicated that appellant had a right knee strain and torn medial meniscus. Their reports, however, did not relate the diagnoses to the July 30, 2004 incident at work. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[11] Dr. Bellingrath advised in an August 18, 2004 report that appellant had complaints of worsening pain, popping and catching in his right knee. He diagnosed lumbar strain and possible knee strain and cartilage tear. Dr. Anderson opined on September 21, 2005 and October 23, 2006 that appellant had a torn right medial meniscus as indicated by MRI scan. He stated that this was caused by an over reliance on appellant's knee due to a previously strained lower back incident. Although the physicians presented diagnoses of appellant's left knee condition, they did not adequately explain how it was causally related to the July 30, 2004 work incident. The medical reports of record did not explain how medically appellant would have sustained a knee injury because he was lifting a tray of mail. There is insufficient rationalized evidence in the record that appellant's right knee injury was work related. Therefore, as he failed to provide a medical report from a physician that explains how the work incident of July 30, 2004 caused or contributed to the claimed right knee injury, appellant has not met his burden of proof.

The Office advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the July 30, 2004 work accident would have caused the claimed injury. Accordingly, he did not establish that he sustained a right knee injury in the performance of duty. The Office properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a right knee injury in the performance of duty.

[11] *See Anna C. Leanza*, 48 ECAB 115 (1996).

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2007, November 14, September 27 and June 12, 2006 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: November 2, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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