

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

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<b>R.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 07-1299</b>
	)	<b>Issued: September 21, 2007</b>
<b>DEPARTMENT OF DEFENSE,</b>	)	
<b>New Cumberland, PA, Employer</b>	)	
_____	)	

*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 April 16, 2007 appellant filed a timely appeal from September 25, 2006 and January 19, 2007 merit decisions of the Office of Workers' Compensation Programs denying his 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 established that he sustained a left knee condition causally related to factors of his federal employment.

**FACTUAL HISTORY**

On July 21, 2006 appellant, then a 59-year-old distribution process worker, filed an occupational disease claim alleging that repeatedly dismounting a forklift caused a repetitive motion injury to his left knee. He stopped work on March 10, 2006 and returned to work with restrictions on March 20, 2006.

In a report dated March 10, 2006, Dr. David A. Keller, Board-certified in family practice, discussed appellant's history of left knee pain for several days going up and down steps at work. He noted that appellant had a history of previous surgery. Dr. Keller diagnosed internal derangement of the left knee.<sup>1</sup>

On March 20, 2006 Dr. Gregory A. Hanks, a Board-certified orthopedic surgeon, noted that appellant experienced left knee pain for one month which increased when he performed his "regular job which involves a lot of continuous up and down and impact..." He diagnosed degenerative joint disease of the left knee. Dr. Hanks stated, "Unfortunately [appellant] already has advanced medial changes. I talked to him about his work situation. Appellant stated that the pounding and the constant impact are really detrimental." Dr. Hanks opined that appellant could perform mostly sedentary duties. He noted that he would eventually require an unicompartmental or total knee replacement.

In a progress report dated April 13, 2006, Dr. Keller related, "[Appellant] came into our office to see me on March 10, 2006 with complaints of left knee pain. He was having significant difficulty, particularly going up and down the steps at work. [Appellant] does this quite a bit at his job. He has found that the knee swells and he has had pain there in the past as well." Dr. Keller opined that appellant could work light duty. He noted that x-rays revealed "advanced medial joint space narrowing with near bone to bone contact and minimal osteophytes." Dr. Keller stated, "I do believe this knee issue is [w]orkers' [c]ompensation in origin. It is an exacerbation of an underlying problem."

Appellant related to Dr. Hanks on April 26, 2006 that he continued to experience pain with significant standing or walking and had difficulty with stairs. He indicated that he was "filing a workers' comp[ensation] claim for a repetitive motion impact claim." Dr. Hanks noted that appellant performed repetitive work for 20 years getting on and off a forklift. He diagnosed degenerative joint disease of the left knee with advanced medial compartment changes. Dr. Hanks opined that appellant could work light duty.

In a progress report dated June 21, 2006, Dr. Keller noted that appellant was doing well after a left knee injection. He currently performed predominately sedentary work and planned to retire. Dr. Keller diagnosed advanced left knee, advanced medial compartment degenerative joint disease and opined that appellant would require a total knee replacement in the future. He released appellant from treatment and found that he should work light duty until retirement.

On August 18, 2006 the Office requested additional factual and medical information from appellant, including a detailed medical report from his attending physician addressing the causal relationship between any diagnosed condition and employment factors. In a statement dated September 1, 2006, appellant attributed his left knee condition primarily to repetitively getting on and off a forklift onto a hard surface. He worked on the forklift for more than 20 years. Appellant related that he underwent arthroscopic surgery of the left knee in 1995.

By decision dated September 25, 2006, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that he sustained a left knee

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<sup>1</sup> Appellant also submitted reports from a nurse dated March 20 and 24, 2006.

condition causally related to the accepted work factors. On October 19, 2006 he requested either an oral hearing or a review of the written record. Appellant submitted a progress report from Dr. Hanks dated March 14, 2006 which duplicated his March 20, 2006 report.

Following a review of the written record, in a decision dated January 19, 2007, an Office hearing representative affirmed the September 25, 2006 decision. The hearing representative found that appellant had not submitted a medical report relating a definite diagnosis to the accepted work factors.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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 filed within the applicable time limitation; that an injury was sustained while 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.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</sup>

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;<sup>5</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>6</sup> and (3) medical evidence establishing 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.<sup>7</sup>

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.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *See Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>5</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004).

<sup>6</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>7</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>8</sup> *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

claimant,<sup>9</sup> must be one of reasonable medical certainty<sup>10</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>11</sup>

### ANALYSIS

Appellant attributed his left knee condition to repeatedly getting on and off a forklift onto a hard surface for over 20 years in the course of his federal employment. The employing establishment did not dispute that he performed the work described. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

On March 10, 2006 Dr. Keller noted that appellant experienced knee pain going up and down steps at work.<sup>12</sup> He diagnosed internal derangement of the left knee. As Dr. Keller did not offer any specific opinion regarding the cause of appellant's condition, his report is of diminished probative value on the issue of causal relationship.<sup>13</sup>

In a progress report dated April 13, 2006, Dr. Keller discussed appellant's history of left knee pain particularly when he used the steps at work. He listed findings of advanced medial joint space narrowing by x-ray. Dr. Keller opined that appellant's "knee issue is [w]orkers' [c]ompensation in origin. It is an exacerbation of an underlying problem." Dr. Keller did not, however, provide any rationale for his finding or explain the nature of the underlying problems and how and why appellant's employment exacerbated the condition. A mere conclusion without the necessary rationale explaining how and why a physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet a claimant's burden of proof.<sup>14</sup>

In a report dated March 20, 2006, Dr. Hanks noted appellant's history of knee pain while performing repetitive up and down motion during the course of his usual employment.<sup>15</sup> He stated, "[Appellant] said [that] the pounding and the constant impact are really detrimental." Dr. Hanks diagnosed degenerative joint disease of the left knee with advanced medial changes. He found that appellant should perform mostly sedentary duties and noted that he would need unicompartmental or total knee replacement at some point. While Dr. Hanks indicated that appellant related that his employment duties worsened his condition, he did not provide an

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<sup>9</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>10</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>11</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

<sup>12</sup> Appellant also submitted March 2006 reports from a nurse. A nurse is not a "physician" under the Act and thus, is not competent to render a medical opinion. 5 U.S.C. § 8101(2); *Vincent Holmes*, 53 ECAB 468 (2002).

<sup>13</sup> *Conrad Hightower*, *supra* note 8.

<sup>14</sup> *See Beverly A. Spencer*, *supra* note 7.

<sup>15</sup> The report prepared by Dr. Hanks for Dr. Keller, was based on a March 14, 2006 examination of appellant.

independent opinion linking the diagnosed condition of degenerative joint disease to his work duties. A physician's report is of little probative value when it is based on a claimant's belief rather than the doctor's independent judgment.<sup>16</sup>

On April 26, 2006 Dr. Hanks discussed appellant's history of repetitive entering and exiting a forklift for 20 years and noted that he was "filing a workers' comp[ensation] claim for a repetitive motion impact claim." He diagnosed degenerative joint disease of the left knee with advanced medial compartment changes and found that he could work with restrictions. While Dr. Hanks noted appellant's belief that his condition was due to repetitive motion and that he was filing a claim for workers' compensation, he failed to provide an independent determination regarding causation. Consequently, Dr. Hanks' opinion is of diminished probative value.<sup>17</sup>

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.<sup>18</sup> Appellant must submit a physician's report in which the physician reviews those factors of employment identified by him as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.<sup>19</sup> He failed to submit such evidence and therefore failed to discharge his burden of proof.<sup>20</sup>

### CONCLUSION

The Board finds that appellant has not established that he sustained a left knee condition causally related to factors of his federal employment.

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<sup>16</sup> *Earl David Seale*, 49 ECAB 152 (1997).

<sup>17</sup> *Id.*

<sup>18</sup> *Patricia J. Glenn*, 53 ECAB 159 (2001).

<sup>19</sup> *Robert Broome*, 55 ECAB 339 (2004).

<sup>20</sup> Appellant submitted new evidence with his appeal. The Board has no jurisdiction to review evidence submitted for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated January 19, 2007 and September 25, 2006 are affirmed.

Issued: September 21, 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