United States Department of Labor
Employees' Compensation Appeals Board

G.N., Appellant	)	
and	)	**Docket No. 07-1945**
	)	**Issued: February 7, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Elma, NY, 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 July 17, 2007 appellant filed a timely appeal from a May 14, 2007 decision of the Office of Workers' Compensation Programs that denied modification of a December 18, 2006 decision denying his compensation claim. He also requested review of the December 18, 2006 decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty.

FACTUAL HISTORY

On September 27, 2006 appellant, then a 56-year-old mail carrier, filed an occupational disease claim alleging that he sustained an injury to his right knee on August 29, 2006 when he stepped out of his truck and felt a sharp pain. He did not stop work in relation to his claimed employment injury. However, on October 3, 2006 appellant notified the Office that he required

leave for nonemployment rotator cuff surgery. The employing establishment controverted appellant's claim.

In a September 26, 2006 x-ray report, Dr. Carol A. Jackson-Gibbon, a radiologist, noted small joint effusions on appellant's right knee but indicated that the test was otherwise normal.

In a November 9, 2006 report, Dr. Fredric M. Hirsh, a Board-certified family practitioner, explained that he first examined appellant on September 26, 2006 and diagnosed medial collateral ligament strain at that time. He indicated that, although he recommended that appellant seek physical therapy for his knee, appellant did not undergo physical therapy because he was recovering from unrelated rotator cuff surgery. Dr. Hirsh concluded: "At this time, I do not believe that [appellant's] knee injury is disabling. However, he cannot return to work because of his shoulder problems." On November 7, 2006 Dr. Hirsh indicated that appellant had pain along the medial aspect of his right knee and had been taking ibuprofen with no relief. He diagnosed medial collateral ligament strain. Also provided was a September 26, 2006 note from Dr. Hirsh who again diagnosed medial collateral ligament strain. He indicated that appellant injured his right knee when he slipped and fell while stepping out of his truck. Appellant also submitted physical therapy notes.

By decision dated December 18, 2006, the Office denied appellant's claim on the grounds that the medical evidence provided was insufficient to establish a causal relationship between the accepted employment incident and appellant's diagnosed condition.

In a December 10, 2006 report, Dr. Donald P. Douglas, a Board-certified orthopedic surgeon, noted that appellant twisted his right knee while stepping out of his mail truck on August 29, 2006. He explained that appellant had "immediate increasing pain which has been persistent ever since" his injury. Dr. Douglas diagnosed medial meniscus tear and noted that x-rays showed no arthritic changes and well-maintained joint spaces on both knees.

On January 11, 2007 Dr. Hirsh explained that he misinterpreted appellant's statement that he had no previous injuries and that appellant had sustained an unrelated right shoulder injury when he slipped and fell in his driveway. He concluded: "In regards to my report of September 27, 2006, I misinterpreted [appellant]. [Appellant], in fact, claims that[,] while stepping out of his truck, he suddenly felt his knee begin to cause pain and he felt a buckling. He did not in fact fall. [Appellant] thinks he may have twisted [his knee] as he got out of the truck." He also submitted additional physical therapy notes.

On February 6, 2007 appellant requested reconsideration. He explained: "Dr. Hirsh confused my right shoulder injury, which was caused when I slipped and fell with my right knee injury which happened when I stepped out of my mail truck on the side of the road and felt a sharp pain."

By decision dated May 14, 2007, the Office denied modification of its December 18, 2006 decision on the grounds that the new medical evidence submitted in support of appellant's reconsideration request did not establish a causal relationship between his diagnosed condition and the employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[2] 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.[3]

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.[4] 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.[5]

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.[6] The opinion of the physician must be based on a complete factual and medical background of the claimant[7] and must be one of reasonable medical certainty[8] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

ANALYSIS

The Board notes that, while appellant filed a claim for an occupational disease, he described an incident that occurred in the course of a single workday or shift and which would

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

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

[5] *Id.*

[6] *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[7] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

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

[9] *Judy C. Rogers*, 54 ECAB 693 (2003).

therefore be more properly treated as a claim for a traumatic injury.[10] The Board finds that appellant established that the August 29, 2006 incident occurred when appellant stepped out of his truck.

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a traumatic injury in the performance of duty because he did not submit rationalized medical evidence establishing causal relationship between the August 29, 2006 incident and his diagnosed medial collateral ligament strain.

Appellant provided several reports from Dr. Hirsh. On September 26, 2006 Dr. Hirsh noted that appellant sustained his right medial collateral ligament strain when he slipped and fell while stepping out of his truck. The Board finds that he did not provide sufficient explanation or rationale supporting his conclusion that the employment incident caused appellant's diagnosed condition. Dr. Hirsh did not note any details, either factual or physical, on the employment incident beyond his simple statement that appellant slipped and fell while stepping out of his truck. He did not provide a reasoned explanation, with medical rationale, physical and factual details discussing how the slip and fall led precisely and directly to appellant's diagnosed medial collateral ligament strain. Accordingly, the Board finds that Dr. Hirsh's September 26, 2006 note, although it addresses causal relationship, does not constitute a well-rationalized medical opinion on the issue of causation and thus, is insufficient to establish appellant's claim on that issue. In a January 11, 2007 report, Dr. Hirsh noted an unrelated shoulder injury prior to the August 29, 2006 employment incident and explained, contrary to his previous reports, that appellant did not fall when stepping out of his truck, but rather appellant stated that he felt a buckling sensation and reported that he may have twisted his knee. He again did not provide a detailed explanation of how stepping out of the truck caused or aggravated a diagnosed condition but instead appears to be repeating the history as provided by appellant. Dr. Hirsh did not note any specific diagnosed condition in his January 11, 2007 report and did not specifically provide his own independent and reasoned opinion regarding causal relationship. Without a more detailed and rationalized medical opinion on the issue of causation, these reports of Dr. Hirsh are insufficient to establish causal relationship between the August 29, 2006 employment incident and a diagnosed condition.

In a December 10, 2006 report, Dr. Douglas noted that appellant twisted his right knee while stepping out of his mail truck on August 29, 2006 and experienced immediate pain. He diagnosed medial meniscus tear. However, Dr. Douglas also did not provide a reasoned medical opinion describing precisely how the twisting action he indicates led to the diagnosed medial meniscus tear. Without a more detailed explanation and better rationalized medical opinion, his report is insufficient to establish that appellant sustained an injury in the performance of duty. For example, neither Dr. Douglas nor Dr. Hirsch explained the processes by which stepping out of a truck would cause or aggravate a particular diagnosed condition.

The Board notes that appellant submitted additional medical reports, including Dr. Jackson-Gibbon's September 26, 2006 x-ray report and Dr. Hirsh's November 7 and 9, 2006 treatment notes. However, none of the additional reports provided addressed causal relationship.

[10] 20 C.F.R. §§ 10.5(q) ("occupational disease" defined); 10.5(ee) ("traumatic injury" defined).

The Board has held that a medical report which does not address causal relationship is not sufficient to discharge a claimant's burden of proof on that particular issue.[11] Because the additional medical reports submitted do not contain an opinion on causal relationship, the element at issue in the instant case are insufficient to establish that appellant sustained an injury in the performance of duty.

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2007 and December 18, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 7, 2008
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

[11] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-468 (1988) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).