United States Department of Labor
Employees' Compensation Appeals Board

A.K., Appellant	)	
and	)	**Docket No. 08-980**
	)	**Issued: October 10, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Fremont, CA, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 19, 2008 appellant filed a timely appeal from a November 15, 2007 nonmerit decision of the Office of Workers' Compensation Programs that denied his request for a review of the written record as untimely filed and September 10 and October 23, 2007 decisions 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 the appeal.

ISSUES

The issues are: (1) whether appellant met his burden of proof in establishing that he developed an occupational disease in the performance of duty; and (2) whether the Office properly denied appellant's request for a review of the written record as untimely filed.

FACTUAL HISTORY

On August 4, 2007 appellant, then a 34-year-old letter carrier, filed an occupational disease claim alleging that he developed a probable tear in the posterior horn of his left knee

medial meniscus. He first became aware of his condition on June 20, 2007 and related it to his employment on July 10, 2007. Appellant did not stop work.

In support of his occupational disease claim, appellant submitted an undated statement describing his job duties. He explained that in the course of a day he sorted letters into various cases, which required standing for between two and three hours, and then delivering his route which required four to five hours of walking. Appellant stated that his left knee had bothered him for more than a year prior to the filing of his claim, but that he first began experiencing serious pain during the third week of June 2007. He stated that a magnetic resonance imaging (MRI) scan revealed a probable radial tear of the meniscus. Appellant had worked for the employing establishment for three years.

In a July 23, 2007 left knee MRI scan report, Dr. Yvonne Sun, a Board-certified diagnostic radiologist, diagnosed patellar osseous changes and hypertrophic changes, intact anterior cruciate ligament (ACL) reconstruction, probable radial tear of the posterior horn of the medial meniscus, small retropatellar joint effusion and small to moderate Baker's cyst.

In an August 29, 2005 report, Dr. Soheil Motamed, a Board-certified orthopedic surgeon, noted that appellant was status post ACL reconstruction in 1997 and had a two-month history of left medial knee pain. An MRI scan conducted that day revealed no gross medial meniscus tear but some attenuation. Appellant diagnosed left knee suspected medial meniscus tear with negative results on MRI scan. On July 10, 2007 Dr. Motamed explained that appellant had a long history of left knee problems but that his pain had worsened over the previous month. He stated that he saw appellant in 2005 for left knee pain and an MRI scan taken at that time revealed no medial meniscus tear but that his pain had worsened. Dr. Motamed diagnosed left knee suspect medial meniscus tear and chondromalacia patellar as well as status post ACL reconstruction in 1997. He recommended a repeat MRI scan and advised that appellant may need a diagnostic arthroscopy. In a July 27, 2007 follow-up report, Dr. Motamed reiterated the history of injury and diagnoses. Given appellant's history of pain for more than two years, he recommended a diagnostic arthroscopy and possible medial meniscectomy.

By decision dated September 10, 2007, the Office denied appellant's occupational disease claim on the grounds that the evidence of record was insufficient to establish that he sustained an injury in the performance of duty as alleged.[1]

On an undated appeal request form, received on October 16, 2007, appellant requested a review of the written record. He provided additional medical evidence.

By decision dated November 15, 2007, the Office denied appellant's request for a review of the written record on the grounds that it was untimely filed. It exercised its discretion by considering appellant's request but noted that he could equally well address the matter by submitting additional evidence through the reconsideration process.

[1] On October 23, 2007 the Office reissued its September 10, 2007 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Act[2] 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.[3] 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.[4]

An occupational disease or injury is one caused by specified employment factors occurring over a longer period than a single shift or workday.[5] The test for determining whether appellant sustained a compensable occupational disease or injury is three-pronged. To establish the factual elements of the claim, appellant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the 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 factors identified by the claimant.[6]

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.[7] The opinion of the physician must be based on a complete factual and medical background of the claimant[8] and must be one of reasonable medical certainty[9] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[10]

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[2] 5 U.S.C. §§ 8101-8193.

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

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

[5] *D.D.*, 57 ECAB 734 (2006).

[6] *Michael R. Shaffer*, 55 ECAB 386, 389 (2004), *citing Lourdes Harris*, 45 ECAB 545 (1994); *Victor J. Woodhams*, *supra* note 3.

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

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

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

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

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof in establishing that he developed an occupational disease in the performance of duty. Appellant claimed that he developed a radial tear of the medial meniscus. He stated that his knee had bothered him for more than a year and became severe in June 2007. Appellant attributed his condition to job duties, explaining that his job required him to stand for approximately two hours per day while casing mail and to walk for up to five hours per day while delivering mail. The Board finds that appellant has established that he cased mail and walked on his route as alleged. However, appellant has not established that his diagnosed condition is causally related to these employment factors.

In support of his occupational disease claim, appellant submitted several reports from Dr. Motamed. On August 29, 2005 Dr. Motamed noted appellant's complaints of left knee pain but explained that diagnostic testing revealed that appellant did not have a torn medial meniscus at that time. Approximately two years later, in reports dated July 10 and 27, 2007, he found that appellant did have a torn medial meniscus as well as a preexisting ACL repair and other knee conditions. The Board finds that Dr. Motamed's reports are insufficient to establish that appellant's diagnosed condition was causally related to his employment factors. Although the physician mentioned that appellant was employed as a mail carrier, he did not otherwise discuss how appellant's employment caused or contributed to his left knee condition. The Board has held that a medical opinion which does not proffer an opinion on causal relationship is of no probative value on that issue.[11] As noted above, causal relationship is established by appellant's furnishing of a medical opinion, fortified by rationale and explanation, linking his condition to his employment factors.[12] Dr. Motamed did not identify specific factors of appellant's employment and explain how they caused or aggravated a diagnosed condition. No other medical reports of record address whether employment factors caused or aggravated appellant's claimed condition.

Without evidence establishing a direct causal relationship between appellant's employment as a mail carrier and his diagnosed condition, explaining precisely how the job caused the condition to manifest, the Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the secretary.[13] Section

[11] *See A.D.*, 58 ECAB ___ Docket No. 06-1183, (issued November 14, 2006) (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).

[12] *Supra* notes 8, 9.

[13] 5 U.S.C. § 8124(b)(1).

10.615 of the federal regulation implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.[14] The Office's regulations provide that the request must be sent within 30 days of the date of the decision for which a hearing is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.[15]

Additionally, the Board has held that the Office, in its broad discretionary authority in the administration of the Act,[16] has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[17] The Office's procedures, which require it to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of Board precedent.[18]

ANALYSIS -- ISSUE 2

The Office issued its decision denying appellant's claim for failure to establish that he developed an occupational disease on September 10, 2007. The record contains an undated request for a review of the written record received by the Office on October 16, 2007.[19] As appellant's request for a review of the written record was received into the record more than 30 days after the date of the Office's September 10, 2007 decision and there is no other evidence supporting that it was sent within 30 days of that decision, the Board finds that the request was untimely.

Although the Office determined that appellant's request was untimely, it nevertheless exercised its discretion by examining appellant's request for an appeal. The Office determined that appellant's case would be best served by his submission of a request for reconsideration along with new supporting evidence. Accordingly, the Board finds that the Office acted within its discretion in denying appellant's hearing request as untimely, because appellant failed to file the request within the statutory time requirements.

[14] 20 C.F.R. § 10.615.

[15] 20 C.F.R. § 10.616(a).

[16] 5 U.S.C. §§ 8101-8193.

[17] *Marilyn F. Wilson*, 52 ECAB 347 (2001).

[18] *Teresa M. Valle*, 57 ECAB 542 (2006). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

[19] Although the Office reissued the initial claim denial on October 23, 2007, with full appeal rights, the record does not indicate that appellant requested a hearing or a review of the written record within 30 days of October 23, 2007.

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he developed an occupational disease in the performance of duty and that the Office properly denied his request for a review of the written record as untimely filed.

ORDER

IT IS HEREBY ORDERED THAT the November 15, October 23 and September 10, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 10, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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