United States Department of Labor
Employees' Compensation Appeals Board

W.R., Appellant	)	
and	)	**Docket No. 09-22**
	)	**Issued: February 20, 2009**
DEPARTMENT OF THE AIR FORCE, 911 AIRLIFT WING, Coraopolis, PA, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 2, 2008 appellant filed a timely appeal from the May 19, 2008 merit and July 25, 2008 nonmerit decisions of the Office of Workers' Compensation Programs denying his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant sustained a left knee injury in the performance of duty; and (2) whether the Office properly refused to reopen his case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 10, 2008 appellant, then a 41-year-old aircraft mechanic, filed a traumatic injury claim (Form CA-1) alleging that on April 9, 2008 after inspecting the right landing gear with his coworker, he exited the gear and sustained a sharp pain in his left knee. He claimed that he experienced pain when he put pressure on his left knee. A coworker, Charles Hoggard, stated

that he witnessed the incident and that after exiting the landing gear appellant immediately had to take pressure off his leg due to pain in his left knee.

In a letter dated April 11, 2008, the Office notified appellant of the deficiencies in his claim and requested that he provide additional information.

An April 9, 2008 emergency room medical report, with an illegible physician's signature, relayed appellant's claims that he was kneeling at work and experienced a sudden onset of left knee pain when he stood up. X-rays of the left knee revealed mild degenerative change in the knee joint with no acute fractures or bony destruction. Appellant was returned to modified duty on April 9, 2008 with restrictions on prolonged standing, walking, climbing, bending and stooping until April 14, 2008. In a supplemental medical report, a physician's assistant reported appellant's allegations that he experienced a sudden onset of sharp pain radiating down the medial aspect of his left knee while bending and stooping during an active repair at work. The physician's assistant diagnosed a probable meniscus tear to the left knee and recommended a follow-up with appellant's workers' compensation physician.

In a May 6, 2008 statement, appellant alleged that on the day of the incident he was working on the flight line and after kneeling on the ground for several minutes he stepped out of the landing jet backward and experienced a sharp pain in his left knee. He could not put any pressure on his knee and was driven into the break room by the truck driver. Appellant claimed that he did not sustain any other injury or similar disability prior to his injury.

By decision dated May 19, 2008, the Office denied the claim finding that appellant did not submit sufficient medical evidence to establish the claimed medical condition was causally related to his employment.

On June 9, 2008 appellant filed a request for reconsideration. He submitted duplicate copies of his April 9, 2008 x-ray report and medical report by the physician's assistant.

By decision dated July 25, 2008, the Office denied further merit review on the grounds that appellant did not raise substantive legal questions, nor include new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking compensation under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,[2] including that he is an "employee" within the meaning of

[1] 5 U.S.C. §§ 8101-8193.

[2] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

the Act[3] and that he filed his claim within the applicable time limitation.[4] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[5] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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.[7] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

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 which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.[9]

ANALYSIS -- ISSUE 1

The issue is whether appellant established that he sustained a left knee injury while repairing landing gear at work. The Board finds he has not met his burden of proof.

In support of his claim, appellant submitted an April 9, 2008 emergency room medical report with an illegible physician's signature, an April 9, 2008 x-ray report and a medical report signed by a physician's assistant.

A physician's assistant is not included in the definition of a "physician" under 5 U.S.C. § 8101(2), thus the medical report signed by the physician's assistant is of diminished probative

[3] *See M.H.*, 59 ECAB ___ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

[4] *R.C.*, 59 ECAB ___ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

[5] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

[7] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[8] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[9] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

value.[10] Further, the x-ray report did not include a medical opinion discussing a left knee injury; rather it diagnosed mild degenerative changes to the knee joint and is therefore insufficient to establish an injury. Finally, in the April 9, 2008 emergency room medical report, a physician relayed appellant's claim that he was injured while performing employment tasks and diagnosed probable meniscal tear to the left knee. This report establishes that an incident occurred but fails to establish that the incident caused an injury. There is no rationalized medical opinion from a physician explaining that an injury occurred.

Appellant did not submit any additional medical evidence. Therefore, Board finds that appellant did not establish that an injury occurred as a result of the April 9, 2009 incident.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act[11] does not entitle a claimant to a review of an Office decision as a matter of right. This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.[12] The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).[13]

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[14] the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[15] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[16] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[17]

ANALYSIS -- ISSUE 2

In support of his claim for reconsideration, appellant submitted duplicate copies of the April 9, 2008 x-ray report and medical report by the physician's assistant. Evidence that repeats

[10] *See* 5 U.S.C. § 8101(2). *See also Guadalupe Julia Sandoval*, 30 ECAB 1491 (1979).

[11] 5 U.S.C. §§ 8101-8193.

[12] 5 U.S.C. § 8128(a).

[13] *Annette Louise*, 54 ECAB 783, 789-90 (2003).

[14] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[15] 20 C.F.R. § 10.606(b)(2).

[16] 20 C.F.R. § 10.607(a).

[17] 20 C.F.R. § 10.608(b).

or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[18] Further, appellant did not show that the Office erroneously interpreted a specific point of law, nor did he advance a new legal argument not previously considered by the Office. Therefore, the Board finds that the Office properly denied further merit review, as appellant did not meet any of the requirements for reopening a case under 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that appellant did not establish that he sustained a left knee injury as a result of the April 9, 2009 incident. The Board also finds that the Office properly refused to reopen his case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the July 25 and May 19, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 20, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[18] *Richard Yadron*, 57 ECAB 207 (2005); *Eugene Butler*, 36 ECAB 393 (1984).