

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

F.S., Appellant

and

**U.S. POSTAL SERVICE, TEALL STATION,
Syracuse, NY, Employer**

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**Docket No. 09-79
Issued: February 20, 2009**

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 October 10, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated November 27, 2007 and a June 30, 2008 nonmerit decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the both the merit and nonmerit issues of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof in establishing that he developed an injury due to factors of his federal employment; and (2) whether the Office properly refused to reopen appellant's case for further consideration of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On January 22, 2007 appellant, then a 47-year-old letter carrier, filed a occupational disease alleging that he developed right knee pain due to factors of his federal employment. He stated that delivering mail aggravated the pain in his right knee. Appellant noted that, on

January 3, 2007, there was high mail volume due to holidays on the two preceding days and that he worked over 10 hours. He stated that his route normally required less than five hours and involved climbing 200 stairs. Appellant was required to make more than double the normal trips to make his deliveries on January 3, 2007. He noted that he had an accepted left knee injury, for which he had received a 15 percent schedule award.

Appellant's supervisor advised that appellant reported that his knee was sore on January 3, 2007 after delivering his route, but that he had not experienced any accident or traumatic event.

The Office requested additional factual and medical information by letter dated February 23, 2007. In a note dated January 24, 2007, Dr. Irving G. Raphael, a Board-certified orthopedic surgeon, stated that appellant had a recent right knee injury. He noted that appellant was required to make additional deliveries on January 3, 2007. Dr. Raphael diagnosed right knee pain and indicated that a medial meniscal tear was possible. He stated, "From [appellant's] history, this appears work related from excessive walking and climbing as a letter carrier, aggravated now by his work."

By decision dated May 3, 2007, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient.

In a report dated July 25, 2007, Dr. Raphael restated appellant's history noting that he had no right knee pain before January 3, 2007, which was a long and strenuous workday during which he developed persistent knee pain. He stated, "It all appears to be an overuse activity level-type pain with possible meniscal pathology." Dr. Raphael recommended a magnetic resonance imaging (MRI) scan. He noted that appellant's symptoms were unchanged on August 22, 2007 and that appellant had not yet undergone the recommended MRI scan.

Appellant requested reconsideration on August 30, 2007 and reiterated that the mail volume on January 3, 2007 was excessive. He stated that the heavy volume of mail caused him to over exert himself and use his legs to the extent that he injured his right knee. Appellant noted that as he did not slip, trip or fall, he did not feel he had sustained a traumatic injury or accident but instead an overuse injury as reported by Dr. Raphael.

On October 10, 2007 Dr. Raphael stated that appellant continued to experience right knee symptoms. He again requested authorization for an MRI scan.

By decision dated November 27, 2007, the Office found that the medical evidence was not sufficient to meet appellant's burden of proof.

Appellant requested reconsideration in a note dated January 16, 2008, Dr. Raphael reviewed appellant's medical history and opined that he had a medial meniscal tear and requested authorization for an MRI scan.

By decision dated June 30, 2008, the Office declined to reopen appellant's claim for consideration of the merits on the grounds that he failed to submit relevant new evidence or argument.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 disability and/or specific condition for which compensation is claimed are causally related to the employment injury. 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.²

The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.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. 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. An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden of proof where there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁴

The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. 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.⁵

¹ 5 U.S.C. §§ 8101-8193.

² *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

³ 20 C.F.R. § 10.5(ee).

⁴ *Id.*

⁵ *Id.*

ANALYSIS -- ISSUE 1

Appellant filed a notice of occupational disease alleging that he developed a right knee condition due to his employment exposures on January 3, 2007. As noted, as he has the burden to establish that his right knee condition was due to the excessive mail volume and delivery time required on that date. The Board notes that his claim is actually for a traumatic injury to his right knee as the result of a series of events or incidents, within a single workday or shift. Appellant has provided a detailed description of the increased volume of mail he delivered on January 3, 2007 as well as the extra steps and effort required to complete his assigned route on that date. The Board finds that appellant has established that he worked as described on January 3, 2007, establishing the incident as alleged.

Appellant must also submit sufficient medical evidence to establish an injury due to his work on that date. Dr. Raphael, a Board-certified orthopedic surgeon, described appellant's work activities on January 3, 2007 and noted that he developed persistent right knee pain. His reports contain a description of appellant's knee condition, including a diagnosis of possible meniscal tear and an opinion that the right knee condition was caused by the accepted incident. While these notes are not sufficient to meet appellant's burden of proof, they do raise an uncontroverted inference of causal relation between his accepted employment incident and his knee condition and are sufficient to require the Office to undertake further development of the claim.⁶ On remand, the Office should authorize appropriate medical testing, such as the requested MRI scan to adequately develop appellant's claim and issue an appropriate decision.⁷

CONCLUSION

The Board finds that appellant's claim is for a traumatic injury. The case is not in posture for decision as the claim has requires additional development of the medical evidence.

⁶ *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

⁷ Due to the Board's disposition of this issue, it is not necessary to adjudicate whether the Office properly denied appellant's request for reconsideration on October 10, 2008.

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2008 and November 27, 2007 decisions of the Office of Workers' Compensation Programs are set aside and remanded for additional development consistent with this decision of the Board.

Issued: February 20, 2009
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