United States Department of Labor
Employees' Compensation Appeals Board

G.B., Appellant	)	
and	)	**Docket No. 08-1978**
	)	**Issued: March 10, 2009**
DEPARTMENT OF THE ARMY, CORPUS CHRISTI ARMY DEPOT, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 9, 2008 appellant filed a timely appeal of the September 24, 2007 and February 13 and May 23, 2008 merit decisions of the Office of Workers' Compensation Programs, finding that he did not sustain an injury on July 7, 2007 in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an injury on July 7, 2007 in the performance of duty.

FACTUAL HISTORY

On July 23, 2007 appellant, then a 60-year-old city electroplater, filed a traumatic injury claim (Form CA-1) alleging that on July 7, 2007 he experienced sharp pain in his left knee and leg when he misstepped and lost his balance while walking down a flight of stairs at work. He submitted a copy of his position description.

On appellant's CA-1 form, Benny Gunter, a supervisor, stated that he did not witness the alleged injury. Mr. Gunter advised that the alleged injury was questionable as appellant probably had a heart problem. In an August 16, 2007 letter, the employing establishment controverted appellant's claim on the grounds that he did not provide notice of the injury until July 23, 2007, when he submitted the CA-1 form to his supervisor.

By letters dated August 24, 2007, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It addressed the additional factual and medical evidence he needed to submit.

In a September 5, 2007 narrative statement, appellant described the July 7, 2007 incident. He was walking downstairs to his locker at a fast pace when he became a little unbalanced on his left leg as he turned around the next set of stairs. Appellant had not experienced any disability or symptoms related to his knee prior to the alleged injury. Immediately, after sustaining the injury, he mentioned it to Eugenio Reyna, a coworker, who signed a statement in support of appellant's claim of injury. Appellant then informed his supervisor about the injury. The supervisor advised him that, since it was Saturday, he should go to the employing establishment's dispensary if his knee was still hurting on Monday.

Dispensary records from the employing establishment's medical unit noted that appellant was evaluated from July 9 to August 20, 2007 for knee pain and that he could work with restrictions. In an August 14, 2007 x-ray report, Dr. David D. Wilson, a Board-certified radiologist, stated that appellant had a normal left knee. An August 14, 2007 report, of a nurse practitioner whose signature is illegible, stated that appellant had suffered from left knee pain since June 2007. In an August 30, 2007 medical report, Dr. Thomas T. Nguyen, an aerospace medicine specialist, provided a history that appellant sustained a left knee injury in June 2007. He diagnosed left knee pain. Dr. Nguyen ordered a magnetic resonance imaging (MRI) scan to rule out internal derangement of the left knee.

By decision dated September 24, 2007, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that he sustained an injury causally related to the July 7, 2007 employment incident.

On October 10, 2007 appellant requested a review of the written record by an Office hearing representative.

In a November 20, 2007 report, Dr. Rufino H. Gonzalez, a Board-certified orthopedic surgeon, who stated that appellant sustained a torn meniscus of the left knee and was scheduled to undergo surgery in January 2008. He recommended that appellant avoid prolonged squatting and climbing and carrying heavy weights.

By decision dated February 13, 2008, an Office hearing representative affirmed the September 24, 2007 decision, as modified. The hearing representative found the medical evidence sufficient to establish that appellant sustained a torn meniscus of the left knee. However, the evidence was insufficient to establish that the diagnosed condition was causally related to the accepted July 7, 2007 employment incident.

By letter dated February 21, 2008, appellant requested reconsideration. In a January 15, 2008 operative report, Dr. Gonzalez stated that he performed an arthroscopy and partial medial meniscectomy of the left knee, chondroplasty of the medial femoral condyle and patella and an excision of plica. He stated that appellant's postoperative diagnoses included a degenerative tear of the medial meniscus of the left knee, Grade 1 and 2 chondromalacia of the medial femoral condyle and patella and plica. A January 17, 2008 hospital record reiterated the diagnoses. It noted that appellant had synovitis and hypertension not otherwise specified and diabetes that was either Type 2 or an unspecified type that was uncontrolled. A February 19, 2008 dispensary record from the employing establishment noted that appellant returned to work with restrictions following left knee surgery.

By decision dated May 23, 2008, the Office denied modification of the February 13, 2008 decision.

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 filed within 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.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.[3]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.[4] In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.[5]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[6] The evidence required to establish

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

[4] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[5] *Linda S. Jackson*, 49 ECAB 486 (1998).

[6] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[7] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[8]

ANALYSIS

The record supports that on July 7, 2007 appellant misstepped and lost his balance as he walked down stairs to his locker. The Board, however, finds that the medical evidence is insufficient to establish that the accepted employment incident caused a left knee injury.

The employing establishment's dispensary records covering the period July 9 through August 20, 2007 note that appellant was evaluated for left knee pain. Dr. Nguyen's August 30, 2007 report stated that appellant experienced left knee pain. However, he listed a history of injury June 2007. Dr. Nguyen ordered an MRI scan to rule out internal derangement of the knee. His diagnosis of pain, without more by way of an explanation, does not constitute a basis for payment of compensation.[9] Neither the employing establishment's dispensary notes nor Dr. Nguyen's report provide any medical rationale explaining how appellant's left knee symptoms were caused by or contributed to by the July 7, 2007 employment incident.[10] The Board notes that the record does not contain an MRI scan confirming a diagnosis of internal derangement of the left knee and stating that the condition was caused or contributed to by the accepted employment incident.

Dr. Wilson's August 14, 2007 x-ray report found that appellant had a normal left knee. The employing establishment's February 19, 2008 dispensary note stated that appellant was returning to work with restrictions following left knee surgery. Neither of these medical documents support that appellant sustained a left knee injury that required surgery due to the July 7, 2007 employment incident.

Dr. Gonzalez' November 20, 2007 report stated that appellant sustained a torn meniscus of the left knee, which required surgery and physical restrictions. His January 15, 2008 report and the January 17, 2008 hospital record provided diagnoses of a degenerative tear of the medial meniscus of the left knee, Grade 1 and 2 chondromalacia of the medial femoral condyle and patella and plica. The hospital record also noted that appellant had synovitis and hypertension not otherwise specified and diabetes that was either Type 2 or an unspecified type that was uncontrolled. This evidence also failed to address how the diagnosed conditions and resultant surgery were caused or contributed to by the July 7, 2007 employment incident.

[7] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[8] *Charles E. Evans*, 48 ECAB 692 (1997).

[9] *Robert Broome*, 55 ECAB 0493 (2004).

[10] *Jimmie H. Duckett*, 52 ECAB 332 (2001).

The August 14, 2007 report of a nurse practitioner, whose signature is illegible has no probative value in establishing appellant's claim. A nurse practitioner is not a "physician" as defined under the Act.[11]

Appellant did not submit sufficient medical evidence to establish a causal relationship between his left knee condition and the accepted July 7, 2007 employment incident. The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained an injury in the performance of duty on July 7, 2007. Therefore, appellant has failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury on July 7, 2007 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 23 and February 13, 2008 and September 24, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 10, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[11] *See* 5 U.S.C. § 8101(2); *Paul Foster*, 56 ECAB 208 (2004); *Thomas R. Horsfall*, 48 ECAB 180 (1996).