United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
	)	**Docket No. 09-122**
and	)	**Issued: March 24, 2009**
	)	
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, El Paso, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 15, 2008 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated July 29, 2008 which denied his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a right knee injury in the performance of duty.

FACTUAL HISTORY

On October 4, 2007 appellant, then a 55-year-old supervisory law enforcement agent filed a claim alleging that, on September 17, 2007, while participating in baton training, his shoes became stuck on the training mat causing him to sustain a right knee strain. In a witness statement, a coworker noted that at the baton training, appellant indicated that his right knee was

sore but he would be alright. The coworker noted that the next day appellant stated his knee was swollen and painful. Appellant did not stop work.

Appellant submitted return to work slips dated October 9, 2007 to June 4, 2008 from Dr. Alvaro A. Hernandez, a Board-certified orthopedist, who noted appellant was examined and could return to work on October 15, 2007. On November 7, 2007 he noted that appellant was examined and was unable to return to work at that time. On December 11, 2007 Dr. Hernandez noted that appellant's next appointment was on January 8, 2008, at which time he advised that appellant was unable to return to work. In a February 19, 2008 work slip, he noted treating appellant and indicated he could return to work as of March 3, 2008. On June 3, 2008 Dr. Hernandez noted that appellant was examined for an injury occurring on May 14, 2008 and was totally disabled. In a progress note dated June 4, 2008, he advised that appellant had a fall and experienced hemarthrosis which was resolved. Dr. Hernandez found range of motion of the right knee as 130 degrees with no instability and negative x-rays. He diagnosed status post right total knee replacement. Appellant also submitted physical therapy notes dated January 3 to February 14, 2008 which indicated he underwent right knee surgery on October 23, 2007.

By letter dated June 19, 2008, the Office advised appellant of the factual and medical evidence needed to establish his claim. It requested that he submit a physician's reasoned opinion addressing the relationship of his right knee condition and specific employment factors.

Appellant submitted a May 15, 2008 prescription note from Dr. Charles Zaltz, a Board-certified orthopedic surgeon, who prescribed a right knee brace and a July 24, 2008 request to purchase a hinged right knee support.

In a decision dated July 29, 2008, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his right knee condition was caused by the factors of employment.

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 the applicable time limitation 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]

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

[1] 5 U.S.C. §§ 8101-8193.

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[3] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[4]

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] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

ANALYSIS

Appellant alleged that he sustained a right knee injury while participating baton training. The Board initially notes that the evidence supports that the incident occurred on September 17, 2007 as alleged. The Board finds however, that the medical evidence is insufficient to establish that appellant sustained a right knee injury causally related to the September 17, 2007 work incident.

On June 19, 2008 the Office advised appellant of the medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from an attending physician addressing how the September 17, 2007 work incident caused or aggravated his right knee condition.

Appellant submitted several brief notes of Dr. Hernandez who examined him and advised that appellant was unable to return to work until March 3, 2008. In a June 3, 2008 return to work slip, Dr. Hernandez noted appellant was examined for a May 14, 2008 injury and was totally disabled. However, these brief notes do not provide a specific diagnosis, a history of injury,[7] or offer an opinion on how the September 17, 2007 incident caused or aggravated his right knee

[3] *Michael E. Smith*, 50 ECAB 313 (1999).

[4] *Id*.

[5] *Leslie C. Moore*, 52 ECAB 132 (2000).

[6] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[7] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

condition.[8] Consequently these reports are of no probative value and do not establish appellant's traumatic injury claim. Such an opinion is essential as the record reflects appellant underwent right knee surgery on October 23, 2007.

On June 4, 2008 Dr. Hernandez again noted appellant had a sustained fall and experienced hemarthrosis which was resolved. He noted normal range of motion with no abnormalities revealed on x-ray. Dr. Hernandez diagnosed status post right total knee replacement. However, he did not provide any narrative explanation of how the September 17, 2007 incident would cause or contribute to a right knee condition or necessitate surgery.

The May 15, 2008 prescription note of Dr. Zaltz for a right knee brace does not offer any opinion on whether appellant's condition was causally related to the September 17, 2007 work incident. Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant submitted physical therapy notes dated January 3 to February 14, 2008. However, the Board has held that physical therapists are not competent to render a medical opinion under the Act.[9] Therefore, these reports are insufficient to meet appellant's burden of proof.

The remainder of the medical evidence does not provide any physician's opinion addressing causal relationship between appellant's right knee condition and the September 17, 2007 work incident.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor, the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[10] Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained right knee injury causally related to his September 17, 2007 employment incident.

[8] *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).

[9] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the FECA); 5 U.S.C. § 8101(2) (this subsection defines a ''physician'' as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

[10] *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 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