

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

R.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Redondo Beach, CA, Employer**

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**Docket No. 09-377
Issued: September 18, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 21, 2008 appellant filed a timely appeal from the October 3, 2008 merit decision of the Office of Workers' Compensation Programs denying his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury causally related to factors of his federal employment.

FACTUAL HISTORY

On February 1, 2008 appellant, then a 52-year-old letter carrier, filed an occupational disease claim for recurring right knee pain. He first became aware of his condition on December 8, 2006 when he twisted his knee while delivering mail. Appellant realized his knee condition was caused or aggravated by his work on January 14, 2008. In an undated letter, he stated that on December 8, 2006 he over stepped and dropped on his right knee while delivering

mail. The knee pain was initially manageable but it persisted when he had to carry heavy parcels and bulk mail. On August 13, 2007 appellant had difficulty walking due to knee pain and called his supervisor for help as he could not finish his route. On January 14, 2008 he twisted his right knee again while delivering mail.

On February 11, 2008 the Office notified appellant that the evidence was insufficient to establish his claim. It requested a medical report containing an opinion of a physician relating his knee condition to the work duties in his federal employment. No additional information from appellant was received.

By decision dated May 7, 2008, the Office denied appellant's claim. It found that the claimed exposures and events occurred but no medical evidence was received which related his knee condition to his federal employment.

Appellant requested reconsideration on August 4, 2008. He submitted medical reports from Kaiser Permanente.¹ In a December 9, 2006 chart note, Dr. Kathleen F. Schweickhardt, an internist, noted that appellant was a letter carrier who drove two hours to work each day. She listed his complaints of right knee and left hand and thumb pain for one and a half weeks and bursal tenderness in the right shoulder. Dr. Schweickhardt diagnosed right anserine bursitis. On August 13, 2007 Dr. Raul R. Prieto, a Board-certified family practitioner, noted appellant's complaint of intermittent right knee pain for several months and that he worked as a letter carrier. He diagnosed right knee strain and probable mild meniscal deterioration. On August 29, 2007 Dr. Sangeeta K. Aggarwal, a Board-certified internist, noted that appellant initially experienced knee pain in December 2006 without a specific injury, although he had tripped at work before. No specific diagnosis was provided.

On September 8, 2007 Dr. Corine A. Yee, Board-certified in diagnostic radiology, advised that August 29, 2007 right knee x-rays revealed mild to moderate narrowing of the medial compartment and minimal spurring. She listed an impression of mild osteoarthritic changes. On October 9, 2007 Dr. Ani Darakjian, Board-certified in diagnostic radiology, stated that a September 25, 2007 magnetic resonance imaging (MRI) scan showed a complex tear of the posterior horn of the medial meniscus extending into the body of the meniscus, degeneration of the lateral meniscus without tear, and possible bone bruise of the anteromedial tibial plateau related to recent trauma. He advised that edema related to degenerative changes was less likely. An October 23, 2007 report from Dr. Ralph Dilibero, Board-certified in diagnostic radiology, reiterated the findings noted by Dr. Darakjian.

In a January 24, 2008 report, Dr. William W. Gow, a Board-certified orthopedic surgeon, noted that appellant was a mail carrier who reported a history of right knee pain for several months which he attributed to walking on his route. The pain was primarily medial and arthroscopic surgery was recommended. Dr. Gow diagnosed a right knee torn medial meniscus. A progress note of February 29, 2008 noted medial joint line tenderness of the right knee.

¹ Appellant also submitted medical reports which addressed other medical conditions not subject to the current claim.

In a February 4, 2008 report, Dr. Jimmie S. Kung, a Board-certified physiatrist, noted that appellant was a mailman who was originally injured on December 8, 2006 when he twisted his right knee and fell forward while delivering mail. Appellant had chronic moderate to mild pain since December 8, 2006 which was associated with prolonged walking. Dr. Kung noted that appellant's primary diagnosis was internal derangement of knee. He listed findings on physical examination and diagnosed right meniscus tear. Dr. Kung placed appellant on modified duty with restrictions for six weeks from February 1 through March 7, 2008. In progress reports of April 14, May 20 and July 1, 2008, he continued appellant on modified duty.

In an October 3, 2008 decision, the Office denied the claim finding that the medical evidence was insufficient to establish that appellant's right knee condition was work related. It found the medical evidence was insufficient to establish that appellant's condition was causally related to either an employment incident on December 8, 2006 or January 14, 2008 or any other factor of his federal employment.²

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ 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.⁴

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

² Appellant submitted additional evidence after the Office issued the October 3, 2008 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Therefore, this new evidence cannot be considered by the Board on appeal. Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004). See also 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (2000). Occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift. Traumatic injury means a condition of the body caused by a specific event or incident, or a series of events or incidents, within a single workday or shift.

⁵ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

Causal relationship is a medical issue, and the medical evidence opinion required to establish a causal relationship is rationalized medical evidence.⁶ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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, 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.⁸ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹

ANALYSIS

Appellant alleged that his right knee condition started on December 8, 2006 when he twisted his knee and fell forward landing on it. Thereafter, his knee condition gradually worsened over time with walking and carrying mail on his postal route. Appellant noted that he was unable to finish his route by August 13, 2007. In the October 2, 3008 decision, the Office noted that it appeared appellant was claiming two discreet traumatic incidents at work. However, the record supports that appellant alleged that his right knee condition developed over a period of more than two work shifts. This is consistent with an occupational disease claim rather than a traumatic injury of December 8, 2006 or January 14, 2008.¹⁰ The decision of the Office will be modified to reflect that appellant's claim is one of occupational disease.

The Board finds that the medical evidence is insufficient to establish that appellant's right knee condition is causally related to factors of his federal employment. The treatment records from Kaiser Permanente are insufficient to establish that his knee condition was caused or aggravated by the walking required on his postal route. On December 9, 2006 Dr. Schweickhardt noted complaint of right knee pain for one and half weeks. She did not address or explain how this related to appellant's work duties. On August 29, 2007 Dr. Aggarwal also noted a history of knee pain since December 2006. However, she did not provide a diagnosis of appellant's knee condition or address how it was related to his federal employment. On August 13, 2007 Dr. Prieto noted that appellant worked as a letter carrier and had a complaint of gradually worsening intermittent right knee pain. He diagnosed right knee strain and probable mild meniscal deterioration. Dr. Prieto did not explain how appellant's work duties as a letter carrier would contribute to the diagnosed condition. Dr. Kung obtained a history of appellant twisting his knee and falling forward on December 8, 2006 and indicated that he had chronic moderate to mild pain since that date associated with walking, carrying and

⁶ *M.W.*, 57 ECAB 710 (2006).

⁷ *D.D.*, 57 ECAB 734 (2006).

⁸ *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁰ *See supra* note 4. *See also Roy L. Humphrey*, 57 ECAB 238 (2005).

prolonged walking. He diagnosed a right meniscus tear. Dr. Kung did not provide a fully-rationalized medical opinion explaining how appellant's employment activities caused or contributed to the diagnosed meniscus tear or internal derangement.¹¹

On January 24, 2008 Dr. Gow attributed appellant's knee pain to walking and opined that his torn medial meniscus was "likely some related to work." However, this opinion is not well explained and appears speculative in nature. There is insufficient discussion by the physician as to how the work duties appellant performed, such as walking, caused or contributed to the diagnosed meniscus condition. Medical reports containing insufficient rationale on causal relation are of diminished probative value.¹² The diagnostic x-ray and MRI scan studies are insufficient to establish appellant's claim as the physicians did not provide any opinion on the relationship between the conditions found to appellant's workplace exposure to walking a postal route.

The Board has held that the mere fact that a disease manifests itself during a period of employment does not raise an inference of causal relationship between the two.¹³ Neither the fact that the condition became apparent during a period of employment nor the belief of appellant that his condition was caused or aggravated by his employment is sufficient to establish causal relation.¹⁴ This is a medical question. A medical report is not probative simply because it is from a physician. To be probative, a physician's opinion must be based on a complete and accurate factual history, expressed in terms of a reasonable degree of medical certainty and supported by rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors.¹⁵ The evidence submitted does not contain a reasoned opinion from any of the attending physician's addressing how the incidents and exposure to walking at work resulted in the diagnosed right knee torn meniscus. Appellant has not established that he sustained an occupational injury.

¹¹ *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 *Robert Broom*, 55 ECAB 339 (2004); *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

¹³ *D.E.*, 58 ECAB ____ (Docket No. 07-27, issued April 6, 2007).

¹⁴ *V.W.*, 58 ECAB ____ (Docket No. 07-234, issued March 22, 2007).

¹⁵ *See Larry D. Dunkin*, 56 ECAB 220 (2004).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish his occupational disease claim.

ORDER

IT IS HEREBY ORDERED THAT the October 3 and May 7, 2008 decisions of the Office of Workers' Compensation Programs are affirmed, as modified.

Issued: September 18, 2009
Washington, DC

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

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

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