

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

C.D., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Bedford Park, IL, Employer)

**Docket No. 09-1881
Issued: April 20, 2010**

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 21, 2009 appellant filed a timely appeal from the July 9, 2009 merit decision of the Office of Workers' Compensation Programs denying his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a right knee condition causally related to his federal employment.

FACTUAL HISTORY

On May 8, 2009 appellant, then a 61-year-old automation clerk, filed an occupational disease claim attributing the swelling and soreness in his right knee to factors of his employment. He reported that for 24 years he had been pushing, lifting and loading heavy mail into mail containers and transporting mail from one unit to another. Appellant first became aware of his condition and that it was caused or aggravated by his employment on January 10, 2009. On the

claim form, the employing establishment advised that appellant did not work regular assignments. Appellant's duties were restricted to dropping mail from a seated position and feeding mail on a machine. He did not stop work.

In a letter dated May 29, 2009, the Office advised appellant of the factual and medical evidence needed to establish his claim and allowed 30 days for the submission of evidence. It asked that he provide a detailed description of the employment-related duties which he believed contributed to his condition. The Office also asked appellant to have an attending physician submit a detailed narrative report that included a firm diagnosis and an explanation as to how the condition diagnosed was caused or aggravated by the incidents in appellant's federal employment. No additional information was received.

By decision dated July 9, 2009, the Office denied appellant's claim. It found that no evidence was submitted to support that the work activities occurred as alleged and no medical evidence was provided to establish a medical diagnosis related to the claimed work events.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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; 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.¹

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

Office regulations define the term occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift.³ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: a detailed description of the employment factors or conditions, which the claimant believes caused or adversely affected the condition or conditions for which compensation is claimed. If a claimant does establish an employment factor, he must submit medical evidence showing that a medical condition was caused by such a factor.⁴ It is the claimant's responsibility

¹ *J.E.*, 59 ECAB ___ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

³ 20 C.F.R. § 10.5(ee).

⁴ *Effie Morris*, 44 ECAB 470 (1993).

to prove that work was performed under these specific conditions at the time, in the manner and to the extent alleged.⁵

ANALYSIS -- ISSUE 1

Appellant filed an occupational disease claim attributing his right knee condition to 24 years of pushing, lifting and loading heavy mail into mail containers and transporting mail from one unit to another. The employing establishment, however, advised that he was on a restrictive job assignment, dropping mail from a seated position and feeding mail on a machine. The record is devoid of any accurate description of appellant's job duties either before the restricted assignment or thereafter. Appellant did not respond to the Office's May 29, 2009 letter requesting additional details about the work factors that he believed contributed to his condition. There is insufficient factual evidence of record demonstrating that his job duties consisted of pushing, lifting, loading and transporting activities. The evidence is insufficient to establish that the claimed work activities occurred as alleged. Furthermore, appellant failed to submit any medical evidence addressing how any of the alleged employment activities caused or aggravated a diagnosed medical condition. For this reason, he has failed to establish a *prima facie* claim for compensation.⁶

For these reasons, the Board finds that appellant did not meet his burden of proof in establishing that he sustained an occupational injury in the performance of duty.

CONCLUSION

Appellant has not met his burden of proof in establishing that he sustained a right knee condition causally related to his federal employment.⁷

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3(a) (April 1993) (in occupational disease cases, the claimant must submit evidence to identify fully the particular work conditions alleged to have caused the disease); *see also* *L.B.*, 59 ECAB ___ (Docket No. 07-1748, issued December 18, 2007) (stating that the claimant has the burden of proof to identify employment factors believed to have caused or aggravated a claimed employment-related condition).

⁶ *See Donald W. Wenzel*, 56 ECAB 390 (2005).

⁷ Following the Office's July 9, 2009 decision and on appeal, appellant submitted new evidence. However, the Board may only review evidence that was in the record at the time the Office issued its final decision. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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