United States Department of Labor
Employees' Compensation Appeals Board

D.K., Appellant	)	
and	)	**Docket No. 09-2002**
	)	**Issued: April 7, 2010**
U.S. POSTAL SERVICE, POST OFFICE, West Bloomfield, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 3, 2009 appellant, through his representative, filed a timely appeal from the July 13, 2009 decision of the Office of Workers' Compensation Programs, which found that he did not sustain an injury on October 17, 2006, as alleged. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on October 17, 2006, as alleged.

On appeal, appellant's attorney contends that the Office's decision is contrary to fact and law.

FACTUAL HISTORY

This is the second appeal before the Board. In a decision dated May 22, 2009, the Board affirmed the Office's January 4 and July 25, 2008 decisions denying appellant's claim. The

Board found that appellant did not establish that he sustained an injury on October 17, 2006. The facts and history as set forth in the prior decision are incorporated by reference.[1]

By letter dated May 28, 2009, appellant, through his attorney, requested reconsideration.

In a July 24, 2008 report, Dr. Norman E. Walter, an attending Board-certified orthopedic surgeon, noted that he commenced treatment of appellant on November 16, 2006. He noted that appellant was referred to him by Dr. Hindi Ahmed and reiterated that he was first informed on December 17, 2007 about a work injury that occurred when appellant slipped and fell on a handicap ramp, which appellant advised, precipitated the pain he was having in his knee. Dr. Walter noted that this would explain why the other knee was bothering him as he was favoring one knee. Appellant still complained of occasional pain. Dr. Walter stated, "The diagnosis presently is status post partial meniscectomy, plica, early arthritis and there appears to be some causal relationship and that [appellant] had no symptoms prior to the complaint and a meniscal tear was demonstrated." In a February 23, 2009 treatment note, he noted that he had not seen appellant "in a while." Dr. Walter noted that appellant was having trouble with his knee as it was giving out on him. On examination, there was no effusion in the left knee, but a little on in the right knee, which was asymptomatic. Dr. Walter noted that appellant's ligaments were intact but there was visible evidence of atrophy of the distal thigh. He noted that appellant's x-rays were remarkable for dramatic changes in the patella, which represented some form of osteoporosis.

By decision dated July 13, 2009, the Office found that the evidence was not sufficient to support modification of the prior denial. It found that appellant failed to provide a comprehensive, probative medical opinion explaining how the October 17, 2006 incident led to his left knee condition.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,[3] including that he is an "employee" within the meaning of the Act[4] and that he filed his claim within the applicable time limitation.[5] The employee must

[1] Docket No. 08-2282 (issued May 22, 2009). On October 17, 2006 appellant, then a 48-year-old letter carrier, alleged that he slipped and fell down a handicap ramp while in the performance of duty, sustaining a torn meniscus of the left knee.

[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *See M.H.*, 59 ECAB ___ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

[5] *R.C.*, 59 ECAB ___ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, 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.[7] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

In order to satisfy the burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.[9] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.[10] The weight of medical opinion is determined by the opportunity for one thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the opinion.[11]

ANALYSIS

The Board previously found that appellant had not provided sufficient medical evidence to establish that his left knee condition was a result of the October 17, 2006 incident. The only new evidence submitted are reports by Dr. Walter dated July 24, 2008 and February 23, 2009. The Board finds that neither of these reports is sufficient to establish a causal relationship. On July 24, 2008 Dr. Walter summarized his prior reports of record, appellant's conservative care for arthritis and arthroscopic surgery on May 1, 2007. He noted that appellant had a distal radius fracture of the wrist due to a fall when seen on May 24, 2007 and was placed in a cast. On July 9, 2007 the case was removed. Appellant continued in physical therapy for his left knee. Dr. Walter stated that "some causal relationship," existed between appellant's diagnosis and the work incident. His opinion does not clearly explain between the October 17, 2006 incident and appellant's left knee condition. The February 23, 2009 treatment note does not discuss any causal relationship between appellant's left knee condition and the October 17, 2006 employment incident. As noted, appellant saw Dr. Walter approximately one month after the work incident but failed to mention the incident to Dr. Walter until December 17, 2007.

[6] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[7] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[8] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[9] *Gary L. Fowler*, 45 ECAB 365 (1994).

[10] *Phillip L. Barnes*, 55 ECAB 426 (2004); *Jamel A. White*, 54 ECAB 224 (2002).

[11] *James R. Taylor*, 56 ECB 537 (2005).

Dr. Walter does not adequately explain how the accepted incident caused the arthritis to appellant's left knee or contributed to this condition. The record reflects that appellant was diagnosed with arthritis of the patellofemoral joint and underwent surgery to correct a torn meniscus. Dr. Walter does not adequately explain how the October 16, 2006 incident aggravated the arthritis or contributed to the need for surgery.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.[12] The medical evidence is insufficient to establish that appellant sustained a work-related injury on October 17, 2006. Accordingly, the Board finds that appellant failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury to his left knee on October 17, 2006, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 13, 2009 is affirmed.

Issued: April 7, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[12] *John D. Jackson*, 55 ECAB 465 (2004); *William Nimitz*, 30 ECAB 57 (1979).