United States Department of Labor
Employees' Compensation Appeals Board

M.Y., Appellant	)	
and	)	**Docket No. 09-1278**
	)	**Issued: February 2, 2010**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Newark, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
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 April 17, 2009 appellant, through his representative, filed a timely appeal from a February 9, 2009 merit decision of the Office of Workers' Compensation Programs denying his traumatic injury 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 established that he sustained an injury on July 2, 2007, as alleged.

On appeal, counsel contends that appellant submitted sufficient medical evidence to establish that he sustained a work-related left knee injury.

FACTUAL HISTORY

On July 13, 2007 appellant, then a 49-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on July 2, 2007 he injured his left knee while bending to perform a pat down.[1]

In a July 10, 2007 prescription note, Dr. Miroslaw Florczyk, a Board-certified internist, stated that he treated appellant for left shoulder, left elbow and left knee work injuries. He took appellant off work until July 17, 2007 for therapy.

By letter dated July 23, 2007, the Office notified appellant of the deficiencies in his claim and requested he provide additional factual and medical evidence.

In an undated statement, appellant stated that he previously sustained an employment injury to his left knee on November 24, 2004 but that this condition was never accepted by the Office.

In a July 13, 2007 medical report, Dr. Lewis Levine, a Board-certified orthopedic surgeon, stated that appellant apparently injured his left shoulder, elbow and knee in 2004 while drawing a heavy mailbag. He noted that appellant had complex issues regarding his health and had a significant number of prior orthopedic surgeries. Physical examination revealed pain in the posterior aspect and medial and joint line pain and global pain about the knee. X-rays were normal. Dr. Levine diagnosed knee pain. In an August 3, 2007 report, he stated that appellant's left knee was still bothering him. A magnetic resonance imaging (MRI) scan revealed a small discoid meniscus with a very small radial tear. Dr. Levine noted that appellant's symptoms appeared to be related to the patellofemoral joint.

By decision dated August 23, 2007, the Office denied the claim on the grounds that appellant did not establish that he sustained an injury on July 2, 2007 causally related to his employment. It found that Dr. Levine did not explain whether the employment injury was a new injury or an aggravation of the preexisting left knee condition.

On August 29, 2007 appellant, through his attorney, filed a request for an oral hearing before an Office hearing representative.

In an August 27, 2007 medical report, Dr. Levine stated that the history appellant provided him on the initial visit was incorrect. Appellant reported that he injured his left knee while squatting at work in July 2007. Dr. Levine opined that the July 2007 injury certainly could have caused a torn meniscus in the left knee. He stated that within a reasonable degree of medical certainty appellant did sustain an injury due to the most recent work event.

Appellant submitted hospital records dated July 5, 2007. Dr. Thomas Hildebrand, Board-certified in emergency medicine, stated that appellant was performing a deep knee bend when he

[1] Appellant also filed a recurrence claim for a June 26, 2007 shoulder injury. This claim was given a separate Office file number and is not at issue in the current appeal.

experienced pain in his left knee. He diagnosed left knee sprain by history and took him off work until a follow-up appointment with Dr. Levine.

An oral hearing before an Office hearing representative was held on December 20, 2007. Counsel argued that the August 27, 2007 medical report from Dr. Levine established a *prima facie* case that appellant's left knee injury was caused by the July 2007 employment injury.

By decision dated March 5, 2008, an Office hearing representative affirmed the August 23, 2007 decision, finding that appellant did not submit sufficient medical evidence to support that his left knee condition was related to the employment injury. She found that the August 27, 2007 medical report from Dr. Levine was equivocal and lacked medical rationale.[2]

On November 17, 2008 appellant, through his representative, filed a request for reconsideration.

In a May 27, 2008 medical report, Edgar Q. Martirez, M.D., stated that he treated appellant for a July 2, 2007 work-related left knee injury. He reported that appellant sustained a hyperflexion injury of the left knee while performing a "buddy" search when he experienced a sudden, severe onset of left knee pain after kneeling down. An MRI scan revealed a tear of the lateral meniscus, which was about a year old. Dr. Martirez noted that appellant may require arthroscopic surgery. In a prescription note dated June 17, 2008, he placed appellant on light duty until left knee surgery.

By decision dated February 9, 2009, the Office denied modification of the prior decisions on the grounds that the evidence did not establish with medical rationale that appellant's employment injury caused his left knee condition.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,[4] including that he is an "employee" within the meaning of the Act[5] and that he filed his claim within the applicable time limitation.[6] The employee must

[2] On June 10, 2008 appellant, through his attorney, filed an appeal with the Board from the March 5, 2008 decision. The appeal was docketed as No. 08-1838. By letter dated November 13, 2008, appellant, through his attorney, withdrew the appeal before the Board in order to request reconsideration from the Office.

[3] 5 U.S.C. §§ 8101-8193.

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

[5] *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).

[6] *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.[7]

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.[8] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[9]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[10]

ANALYSIS

The issue is whether appellant established that he sustained a left knee injury on July 2, 2007 while bending at work. The Board finds he has not submitted sufficient medical evidence to meet his burden of proof.

Appellant submitted several medical reports from Dr. Levine. On July 13, 2007 Dr. Levine diagnosed knee pain stating that appellant apparently injured his knee in 2004 while drawing a heavy mailbag and had undergone a significant number of orthopedic surgeries. In an August 3, 2007 report, he interpreted an MRI scan as revealing a small discoid meniscus with a small radial tear and noted that appellant's symptoms of left knee pain seemed to be related to the patellofemoral joint. On August 27, 2007 Dr. Levine stated that appellant provided an incorrect history on his initial visit and had injured his left knee while squatting at work in July 2007. He opined that within a reasonable degree of medical certainty appellant sustained an injury due to the most recent work event and that the July 2, 2007 injury certainly could have caused a torn meniscus in the left knee.

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

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

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

[10] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

The Board finds that Dr. Levine's opinion on causation is insufficient to meet appellant's burden of proof. Dr. Levine did not provide adequate rationale to support his conclusion that the alleged July 2, 2007 employment injury caused a torn meniscus of the left knee. Specifically, he did not describe how the mechanisms associated with appellant's squatting at work tore the left knee meniscus.[11] Dr. Levine did not provide a consistent, comprehensive history of appellant's left knee injury.[12] In the July 13, 2007 medical report, he initially described the cause of appellant's injury as a 2004 work event, however, he later stated that this was incorrect. Notably, appellant alleged that he previously sustained a left knee work injury on November 24, 2004 but that the Office did not accept it. Dr. Levine did not provided a complete history describing the prior 2004 knee condition or how it was related to appellant's current condition. He did not address whether the current torn meniscus of the left knee was due to the 2004 injury or whether the alleged July 2, 2007 work injury was the sole cause of the current condition. Moreover, Dr. Levine did not discuss whether the 2004 injury had healed or predisposed appellant to a future knee injury. He did not give a comprehensive and consistent history of appellant's knee condition, or provide a rationalized medical opinion relating the torn meniscus to the July 2, 2007 employment injury. The Board finds Dr. Levine's reports are insufficient to establish appellant's claim.[13] Additionally, his August 27, 2007 report was couched in speculative terms in that he reported that the alleged July 2, 2007 injury could have caused a torn left meniscus. Without medical rationale to explain his conclusion, it is of diminished probative value and insufficient to establish appellant's claim.[14]

In a July 10, 2007 prescription note, Dr. Florczyk treated appellant for left knee, shoulder and elbow work injuries and placed him off work. He did not describe how appellant injured his left knee at work or provide a compensable diagnosis pertaining to the left knee injury. Dr. Florczyk's report does not establish appellant's claim.[15]

Appellant also submitted July 5, 2007 hospital records in which Dr. Hildebrand stated that appellant was performing a deep knee bend when he experienced left knee pain. Dr. Hildebrand diagnosed left knee sprain. He also failed to provide a rationalized medical opinion explaining how the mechanisms of appellant's bending could cause a left knee sprain. Thus, these records are also of diminished probative value.[16]

In a May 27, 2008 medical report, Dr. Martirez stated that he treated appellant for a July 2, 2007 work-related left knee injury. He reported that appellant sustained hyperflexion of the knee after kneeling down while performing a search. Dr. Martirez diagnosed a tear of the lateral meniscus. In a June 17, 2008 prescription note, he placed appellant on light duty until left knee surgery. This report is similarly insufficient to meet appellant's burden of proof as

[11] *See C.B.*, 60 ECAB ___ (Docket No. 08-1583, issued December 9, 2008); *T.H.*, *supra* note 9.

[12] *See Jennifer Atkerson*, 55 ECAB 317 (2004).

[13] *Id*.

[14] *See T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009); *Kathy A. Kelley*, 55 ECAB 206 (2004).

[15] *See Claudio Vazquez*, 52 ECAB 496 (2001).

[16] *See Daniel J. Overfield*, 42 ECAB 718 (1991).

Dr. Martirez did not provide a fully-rationalized opinion explaining how appellant's kneeling caused the lateral meniscus tear. Dr. Martirez stated that appellant sustained a hyperflexion injury, however, he did not explain the type of hyperflexion injury that appellant experienced or how it caused a lateral meniscus tear. Thus, his report does not establish that appellant sustained a left knee condition causally related to his July 2, 2007 employment injury.[17]

None of the remaining medical evidence of record addresses the cause of appellant's left knee injury or otherwise provides an opinion that his left knee condition was causally related to his July 2, 2007 employment injury. Thus, the Board finds that appellant did not establish his claim.

CONCLUSION

The Board finds that appellant did not establish that he sustained an injury on July 2, 2007 in the performance of duty.

ORDER

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

Issued: February 2, 2010
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

[17] *See id.*