

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

<p>M.M., Appellant</p> <p>and</p> <p>DEPARTMENT OF LABOR, MINE SAFETY & HEALTH ADMINISTRATION, Vacaville, CA, Employer</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Docket No. 09-1422</p> <p>Issued: January 22, 2010</p>
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<p><i>Appearances:</i></p> <p><i>Alan J. Shapiro, Esq., for the appellant</i></p> <p><i>Office of Solicitor, for the Director</i></p>	<p><i>Case Submitted on the Record</i></p>
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DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 18, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 1, 2009. 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 has established any additional injuries as causally related to his November 26, 2007 employment incident.

FACTUAL HISTORY

On November 29, 2007 appellant, then a 58-year-old inspector, filed a traumatic injury claim alleging that he sustained a left knee injury on November 26, 2007 when he twisted while attempting to sit on an airplane. The claim form indicated that appellant did not initially stop working. An orthopedic surgeon, Dr. Andrew Landis, provided a November 28, 2007 report with a history of injury and a diagnosis of left knee strain with synovitis.

A magnetic resonance imaging scan dated February 15, 2008 found a tear of the left lateral meniscus. In a report dated February 25, 2008, Dr. Chao Sun, an occupational medicine specialist, provided results on examination and diagnosed a torn lateral meniscus.

In a report dated March 4, 2008, Dr. Lawrence Tkach, provided a history of the employment incident and stated that appellant had left knee pain and swelling for the past three or four weeks. Dr. Tkach also noted that appellant had a prior left lateral meniscectomy when he was approximately 20 years old. He provided results on examination and diagnosed: lateral compartment degenerative arthritis, left knee greater than right; severe patellofemoral arthritis, left knee; status post lateral meniscectomy, age of 20; questionable residual tear; chondrocalcinosis of both knees; and right knee degenerative arthritis, nonindustrial. Dr. Tkach further stated, "I suspect he has been developing arthritis progressively over the years since that meniscectomy. It sounds like it became more symptomatic in the industrial setting on 11/25/07 [sic]."

On May 9, 2008 the Office accepted the claim for a left knee sprain. By letter dated May 12, 2008, the Office advised appellant that additional medical evidence was required to establish any additional left knee conditions as employment related. Appellant submitted May 2 and August 5, 2008 reports from Dr. Tkach providing results on examination.

By decision dated August 25, 2008, the Office found appellant had not submitted sufficient medical evidence to establish any additional employment-related conditions. Appellant requested a telephonic hearing before an Office hearing representative, which was held on January 13, 2009. He submitted a November 18, 2008 report from Dr. Tkach, providing results on examination and diagnosing severe lateral knee arthritis with chondrocalcinosis and patellofemoral chondromalacia.

By decision dated April 1, 2009, the hearing representative affirmed the August 25, 2008 decision. The hearing representative found the medical evidence was insufficient to establish any additional conditions as employment related.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.² In order to establish causal relationship, a physician's opinion must be based on a complete factual and medical background, 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 activities.³

¹ 5 U.S.C. §§ 8101-8193.

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Gary L. Fowler*, 45 ECAB 365 (1994).

ANALYSIS

The Office accepted a left knee sprain resulting from the November 26, 2007 employment incident when appellant twisted his knee while attempting to sit on an airplane. Appellant seeks to establish additional employment-related conditions resulting from the November 26, 2007 incident. It is, as noted above, his burden of proof to submit rationalized medical evidence on the issue of causal relationship.

In this case, Dr. Sun diagnosed a lateral meniscus tear, but offered no opinion on causal relationship with the employment injury. Dr. Tkach provided several diagnoses, including degenerative arthritis and chondrocalcinosis. He did not, however, provide a rationalized medical opinion on causal relationship with employment. Dr. Tkach stated that he believed appellant had been developing arthritis over the years since his prior meniscectomy and it became “more symptomatic” after the employment injury. To the extent Dr. Tkach is referring to an employment-related aggravation, he must provide additional explanation and detail regarding the nature and extent of any aggravation. The medical evidence does not contain an opinion, based on a complete background, on causal relationship between a diagnosed meniscal tear, arthritis or other left knee condition and the employment injury, with supporting medical rationale. It is appellant’s burden of proof, and the Board finds that appellant did not meet his burden in this case.

CONCLUSION

The Board finds that appellant did not establish any additional left knee conditions as employment related.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 1, 2009 and August 25, 2008 are affirmed.

Issued: January 22, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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