United States Department of Labor
Employees' Compensation Appeals Board

A.N., Appellant	)	
and	)	**Docket No. 09-2324**
	)	**Issued: June 28, 2010**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Glynco, GA, Employer	)	

Appearances:
Appellant, pro se
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 September 21, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 15, 2009 which denied appellant's traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a right knee injury on January 5, 2009.

FACTUAL HISTORY

On January 5, 2009 appellant, then a 45-year-old correctional institutional administrator, filed a traumatic injury claim, alleging that he sustained a right knee injury that day while walking on steps at the employing establishment. He did not stop work.

Appellant submitted a January 5, 2009 memorandum from the employing establishment medical officer who referred him for medical treatment for a right knee injury.[1] Also submitted was a January 5, 2009 authorization for treatment prepared by a registered nurse. Appellant submitted a January 5, 2009 memorandum from the employing establishment health unit staff to the law enforcement instructor, noting restrictions with regard to his right knee. On January 5, 2009 he was treated by Dr. J. Melvin Deese, a Board-certified orthopedic surgeon, for a right knee injury on that day. Dr. Deese returned appellant to sedentary work with the use of crutches and recommended a magnetic resonance imaging (MRI) scan. On January 21, 2009 he diagnosed a tear of the right anterior cruciate ligament (ACL) and prescribed a knee brace and physical therapy. A January 8, 2009 MRI scan of the right knee revealed a large joint effusion and a small intrasubstance tear of the ACL. Appellant underwent physical therapy from January 26 to February 9, 2009 for his right knee.

By letter dated March 12, 2009, the Office requested additional factual and medical information from appellant stating that the initial information submitted was insufficient to establish an injury, as alleged.

Appellant submitted a March 4, 2009 workman's compensation update note from Dr. Deese who diagnosed ACL tear and recommended continued use of a knee brace. Dr. Deese returned appellant to medium-duty work. Appellant also submitted physical therapy notes from February 5 and 19, 2009.

In a decision dated April 15, 2009, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his right knee condition was caused by the January 5, 2009 incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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 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.[3]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component is weather the employee actually experienced

[1] The signature of the physician is illegible.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Gary J. Watling*, 52 ECAB 357 (2001).

the employment incident which is alleged to have occurred.[4] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[5]

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.[6] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[7]

ANALYSIS

Appellant alleged that he sustained a right knee injury on January 5, 2009 while climbing steps at work. The Board notes that the evidence supports that the incident occurred on January 5, 2009 as alleged. The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a right knee injury causally related to the January 5, 2009 work incident.

On March 12, 2009 the Office advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from an attending physician in which the physician explains why the January 5, 2009 work incident caused or aggravated his claimed condition.

Appellant also submitted a January 5, 2009 workman's compensation update note from Dr. Deese who treated him for a right knee injury. Dr. Deese returned appellant to sedentary work with the use of crutches. In a January 21, 2009 prescription note, he recommended physical therapy. Similarly, in a January 21, 2009 note, Dr. Deese diagnosed a tear of the right ACL and prescribed a knee brace. On March 4, 2009 he diagnosed ACL and recommended appellant use a knee brace and returned him to work medium duty. Dr. Deese, however did not provide a history of the January 5, 2009 incident[8] or offer any opinion on how it caused or

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Id*.

[6] *Leslie C. Moore*, 52 ECAB 132 (2000).

[7] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[8] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

aggravated his diagnosed condition.[9] Consequently these reports are of diminished probative value and do not establish appellant's traumatic injury claim.

The remainder of the medical evidence, including an MRI scan of the right knee, fails to address causal relationship between appellant's diagnosed right knee condition and the January 5, 2009 work incident.

Other evidence submitted by appellant included a January 5, 2009 authorization for treatment signed by a registered nurse. He also submitted physical therapy notes from January 26 to February 19, 2009. The Board has held that treatment notes signed by a nurse or physical therapist are not considered medical evidence as these providers are not a physician under the Act.[10] Appellant submitted a January 5, 2009 memorandum from the employing establishment health unit staff to the law enforcement instructor, noting restrictions for appellant with regard to his right knee. There is no evidence that the document is from a physician. As noted, medical documents not signed by a physician are not probative medical evidence and do not establish appellant's claim.[11] Appellant submitted a January 5, 2009 memorandum from an employing establishment medical officer who referred him for medical treatment for a right knee injury. However, this person's signature is illegible and there is no indication of who signed this report. The Board has held that medical reports lacking proper identification do not constitute probative medical evidence.[12]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[13] Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

On appeal appellant submitted a new medical report from Dr. Deese and asserted that it documented his claim. The Board may not consider such new evidence for the first time on appeal.[14] As noted, the medical evidence of record at the time of the Office's April 15, 2009 decision is insufficient to establish appellant's claim.

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[9] *A.D.*, 58 ECAB 149 (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).

[10] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

[11] *Id.*

[12] *See R.M.*, 59 ECAB ___ (Docket No. 08-734, issued September 5, 2008); *D.D.*, 57 ECAB 734 (2006).

[13] *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[14] *See* 20 C.F.R. § 501.2(c). This does not preclude appellant from requesting reconsideration from the Office and submitting new evidence in support of his request.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a right knee injury causally related to the January 5, 2009 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 15, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 28, 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