

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

I.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Greensboro, NC, Employer**

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**Docket No. 10-690
Issued: November 3, 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 February 8, 2010 appellant filed a timely appeal from a September 24, 2009 merit decision of the Office of Workers' Compensation Programs denying his claim for compensation and a December 15, 2009 decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty; and (2) whether the Office properly denied his request for further merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 12, 2009 appellant, then a 51-year-old express mail courier, filed an occupational disease claim (Form CA-2) alleging that he developed severe pain, popping, and weakness in both his right and left knee as a result of employment activities. He first became aware of his claimed condition on June 1, 2001. Appellant did not stop work.

On February 17, 2009 the Office requested additional evidence, including a comprehensive medical report containing a diagnosis, description of appellant's symptoms, the results of examinations and tests and medical rationale explaining how his diagnosed condition was causally related to specific factors of his employment.

On February 6, 2009 appellant submitted a factual statement describing his work duties and the employment factors he believed caused his condition. He claimed his knee problems were consequential injuries from a previous work-related accident on January 19, 2001 where he was hit by a large moving bulk mail container, pinned by a bay door well and backed into by a semi truck trailer.¹ Appellant contends that the modified-job assignment he was given required him to get in and out of a tight car to deliver mail numerous times a day, causing severe pain in both his knees and back. In a letter dated February 11, 2009, the employing establishment controverted appellant's bilateral knee condition claim as it appeared he was filing for a recurrence of disability and not a new occupational disease or illness.

Appellant submitted medical records dated July 11, 2007 to January 16, 2009 from Cary Orthopedic Spine Specialists. In an October 16, 2008 medical report, Dr. Gary L. Smoot, Board-certified in physical medicine and rehabilitation, reported that appellant's bilateral knee examination was normal without tenderness, instability or swelling with full painless range of motion, including negative bilateral straight leg raising. He stated that appellant's knee x-rays from March 31, 2006 appeared to be normal but referred him to Dr. Brian T. Szura, a Board-certified orthopedic surgeon, due to reports of long-term symptoms.

In a November 14, 2008 medical report, Dr. Szura provided a brief history of appellant's prior course of treatment and noted that his left knee examination was normal while right knee x-rays demonstrated lateral patellar tilt with no evidence of degeneration. On December 4, 2008 Dr. Steve Carter, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of appellant's right knee showed no definite evidence of meniscal pathology, although the possibility of a small free edge tear could not be excluded. He noted that the MRI scan showed no ligamentous injury, but demonstrated evidence of patellar chondromalacia and lateral facet edema. In a January 16, 2009 report, Dr. Szura evaluated the December 4, 2008 MRI scan of appellant's right knee and diagnosed bilateral patellofemoral chondromalacia with proximal patellar tendinitis as well as right knee posterior soft tissue lesion.

In a letter dated March 5, 2009, appellant informed the Office that additional medical information concerning his bilateral knee condition could be found in case number xxxxxx718. He further requested that his current occupational injury be filed as a new claim where he had previously filed this injury under a related case number xxxxxx718.

By decision dated May 4, 2009, the Office denied the claim finding that appellant did not submit sufficient medical evidence to establish that his bilateral knee condition was causally related to factors of his employment as an express mail courier.

¹ Appellant contends that information concerning his previous claim can be found in case number xxxxxx718 but that case file is not before the Board in this appeal. See 20 C.F.R. § 501.2(c).

On August 7, 2009 appellant requested reconsideration from the Office and submitted a July 24, 2009 medical report from Dr. Szura who stated that appellant's bilateral knee injury was likely not related to his previous compensable injury sustained in 2001 and that his present knee symptoms were primarily related to patellofemoral chondromalacia and patellofemoral syndrome. Dr. Szura further noted that appellant's job activities over the last two years were likely not the cause of appellant's knee condition but were certainly contributory and likely caused aggravation of his underlying condition.

By decision dated September 24, 2009, the Office denied modification of its May 4, 2009 decision on the grounds that the medical evidence of record failed to establish the causal relationship between the bilateral knee injury and the related employment factors.

On December 4, 2009 appellant requested reconsideration and submitted a November 24, 2009 medical report from Dr. Szura who elaborated on his July 24, 2009 medical report. Dr. Szura stated that appellant's work activities over the last two years had aggravated the chondromalacia of his patellofemoral articulation because frequent squatting and stooping was required for him to enter and exit his car causing substantial wear and degeneration of the patellofemoral articulation.

By decision dated December 15, 2009, the Office denied appellant's request for reconsideration without a merit review. It found that there was no new evidence submitted and specifically, "no medical report dated September 24, 2009, or any other date at this time" and that appellant did not otherwise meet the requirements for reconsideration.

LEGAL PRECEDENT -- ISSUE 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.²

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence.³ Rationalized medical opinion evidence is medical evidence which 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 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. This

² *Lourdes Harris*, 45 ECAB 545, 547 (1994).

³ *D.U.*, 61 ECAB ___ (Docket No. 10-144, issued July 27, 2010).

medical opinion must include an accurate history of the employee's employment injury, and must explain how the condition is related to the injury. 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.⁴

ANALYSIS -- ISSUE 1

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a bilateral knee injury causally related to factors of his employment as an express mail courier.

Appellant was initially evaluated by Dr. Smoot from July 11, 2007 to October 16, 2008. Dr. Smoot reported that appellant's knee examination was normal with negative bilateral straight leg raising and functional active lumbar range of motion. He assessed appellant as having degenerative disc disease lumbar and referred him to Dr. Szura due to reports of long-term symptoms. While Dr. Smoot noted that appellant reported pain in the same areas that he had been treated for prior to his job as an express mail courier, he failed to provide an accurate description of previous relevant treatment. He neither mentioned that appellant's condition was work related nor provided a rationalized opinion addressing the causal relationship between appellant's diagnosed condition and the factors of employment implicated in the claim.⁵ Medical reports not containing adequate rationale on causal relationship are of diminished probative value and are insufficient to meet an employee's burden of proof.⁶ Therefore, Dr. Smoot's medical reports are insufficient to meet appellant's burden of proof.

On December 4, 2008 diagnostic testing was obtained by Dr. Carter and the MRI scan of appellant's right knee showed no ligamentous injury but demonstrated evidence of patellar chondromalacia and lateral facet edema. While Dr. Carter diagnosed appellant's right knee injury, he did not explain why he believed that appellant's condition was due to his employment activities as an express mail courier. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁷ Without medical reasoning explaining how appellant's employment factors caused his knee condition, Dr. Carter's report is insufficient to meet appellant's burden of proof.⁸

In a November 14, 2008 medical report, Dr. Szura noted appellant's 2001 employment incident, which initially caused his back and knee pain and provided a brief description of appellant's prior course of treatment. In a January 16, 2009 medical report, Dr. Szura reviewed

⁴ *James Mack*, 43 ECAB 321 (1991).

⁵ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁶ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

⁷ *C.B.*, 61 ECAB ____ (Docket No. 09-2027, issued May 12, 2010); *S.E.*, 60 ECAB ____ (Docket No. 08-2214, issued May 6, 2009).

⁸ *C.B.*, 60 ECAB ____ (Docket No. 08-1583, issued December 9, 2008).

appellant's MRI scan and diagnosed bilateral patellofemoral chondromalacia with proximal patellar tendinitis as well as right knee posterior soft tissue lesion. A July 24, 2009 medical report from Dr. Szura addressed the knee injury and determined that appellant's job activities over the past two years likely caused and contributed to aggravation of the condition though it was not the cause of the initial injury.

The Board finds that the opinion of Dr. Szura is not well rationalized. Dr. Szura did not provide an adequate explanation of how appellant's work as an express mail carrier caused or contributed to any preexisting knee condition or the need for treatment commencing the past two years. While briefly noting a history of appellant's prior knee and back injury, he did not set out any detail pertaining to appellant's prior treatment. Further, Dr. Szura's July 24, 2009 medical report lacks sufficient medical reasoning explaining how appellant's work activities contributed to or aggravated his knee injury. His reports are vague and speculative, failing to set out any detail pertaining to appellant's prior medical history or treatment. Dr. Szura's medical reports lack a clear explanation on the causal connection of appellant's knee injury to his factors of employment as an express mail courier and, as such, are of diminished probative value. His reports are insufficient to meet appellant's burden of proof in establishing causal relationship between the claimed bilateral knee condition and his factors of employment as an express mail courier.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.⁹ An award of compensation may not be based on surmise, conjecture, speculation or on the employee's own belief of causal relation.¹⁰ Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office properly denied his claim for compensation.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a), the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹¹ Section 10.608(b) of Office regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹²

⁹ *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁰ *D.D.*, 57 ECAB 734 (2006).

¹¹ *D.K.*, 59 ECAB 141 (2007).

¹² *K.H.*, 59 ECAB 495 (2008).

ANALYSIS -- ISSUE 2

The Board finds that the Office improperly denied appellant's December 4, 2009 request for review.

In support of his reconsideration request, appellant submitted a November 24, 2009 medical report from Dr. Szura in which he elaborated on his previous reports. Dr. Szura explained that frequent squatting and stooping required for entering and exiting his car for work caused substantial wear and degeneration of appellant's patellofemoral articulation.¹³ He provided an opinion on the issue of causal relationship and discussed how appellant's employment activities were competent to have aggravated the degeneration of the claimed knee condition. The Board finds his report to be relevant and pertinent new evidence not previously considered by the Office and, therefore, sufficient to warrant further review of the case on the merits.¹⁴

The case will be remanded to the Office for a decision on the merits of appellant's claim. On remand, the Office should consider Dr. Szura's November 24, 2009 medical report, together with the previously submitted evidence of record, to determine if appellant has established that he sustained a knee injury in the performance of duty causally related to factors of his federal employment as an express mail courier.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his knee injury is causally related to factors of his federal employment. The Office, however, improperly denied appellant's request for a merit review pursuant to section 8128(a) of the Act.

¹³ In his December 15, 2009 decision, the claims examiner stated that appellant failed to submit new evidence in support of his reconsideration request. The record reflects, however, that Dr. Szura's letter was received by the Office on December 7, 2009. The Office is required to review all evidence submitted by a claimant and received by the Office prior to the issuance of its final decision, including evidence received on the date of the decision. *See Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch*, 41 ECAB 548 (1990) (Office did not consider new evidence received four days prior to the date of its decision); *see Linda Johnson*, 45 ECAB 439 (1994) (applying *Couch* where the Office did not consider a medical report received on the date of its decision).

¹⁴ *See R.M.*, 59 ECAB 690 (2008); *Donald T. Pippin*, 54 ECAB 631 (2003); *see also E.R.*, 61 ECAB ____ (Docket No. 09-1655, issued March 18, 2010).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' September 24, 2009 decision be affirmed. The Office's December 15, 2009 decision is set aside and the case is remanded for further action consistent with this decision.

Issued: November 3, 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