United States Department of Labor
Employees' Compensation Appeals Board

B.J., Appellant	)	
and	)	**Docket No. 10-556**
	)	**Issued: October 21, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Colorado Springs, CO, Employer	)	

Appearances:
Appellant, pro se
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 December 8, 2009 appellant filed a timely appeal from the June 12, 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 this case.

ISSUE

The issue is whether appellant sustained a traumatic injury while in the performance of duty on December 31, 2007.

FACTUAL HISTORY

On July 1, 2008 appellant, then a 57-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 31, 2007 he sustained a right knee injury when he slipped and fell on ice while delivering mail. His supervisor noted that she was not informed of any incident until she inquired about appellant's absence after February 28, 2008. The employing establishment controverted the claim. It contended that he did not report the claimed incident within 30 days, and he failed to provide medical documentation establishing a causal relationship between his claimed condition and the alleged incident.

Appellant submitted a March 31, 2008 disability slip from Dr. Richard Meinig, a Board-certified orthopedic surgeon. On June 12, 2008 Dr. Meinig diagnosed right knee meniscus tear and recommended physical therapy.

In an undated statement, appellant indicated that on the date in question, his right foot slipped on ice, sending his "full weight impact to [his] knee, hip and then [his] shoulder." He notified the station manager of the incident upon his return to the employing establishment. Treatment was delayed until February 18, 2008 because medical coverage was not available through his carrier until that time.

By letter dated July 22, 2008, the Office informed appellant that the evidence submitted was insufficient to establish that the incident occurred as alleged or that he had sustained an injury as a result of the alleged incident. He was advised to submit additional information and evidence, including witness statements and a physician's report, which contained a diagnosis and explanation as to how his diagnosed condition resulted from the claimed employment event.

Appellant submitted February 18, 2008 progress notes, signed by Elizabeth Allen, "ERA." Ms. Allen stated that appellant "fell last year, [and had] never been the same. [He] had another fall onto that right knee and hip around Christmas time." Musculoskeletal examination revealed decreased motion in the right knee and hip. Ms. Allen diagnosed joint pain in the right knee and hip.

Appellant submitted progress notes for the period March 7 through April 16, 2008 from Dr. Kent G. Roberson, Board-certified in the field of family medicine. On March 7, 2008 Dr. Roberson stated that appellant was experiencing right knee pain as a result of a fall. On March 17, 2008 he indicated that appellant had a new problem, namely a meniscus injury.

In a report dated April 24, 2008, Dr. Meinig stated that appellant "took a fall in January and describe[d] sort of a twisting type injury and ha[d] subsequently been plagued with a catching-type sensation primarily along the medial aspect of the knee." Physical examination revealed tenderness along the medial joint line. X-rays were unremarkable for significant osteoarthritis. A magnetic resonance imaging (MRI) scan showed some mucinoid changes in the anterior cruciate ligament and a tear of the posterior horn of the medial meniscus. Dr. Meinig diagnosed status post-traumatic meniscus tear of the right knee.

On May 7, 2008 appellant underwent a right medial meniscus degenerative tear debridement, which was performed by Dr. Meinig. In a May 19, 2008 report, Dr. Meinig stated that appellant had no effusion following his May 7, 2008 right knee arthroscopy.

The record contains a February 20, 2008 report of an x-ray of the right knee; a March 12, 2008 report of an MRI scan of the right knee; a May 15, 2008 hematology report; a May 16, 2008 emergency room departure summary and an August 11, 2008 patient information form.

In a decision dated September 3, 2008, the Office denied appellant's claim. It accepted that appellant had fallen on the ice on December 31, 2007. The Office found that the medical evidence was insufficient to establish that the accepted incident caused his claimed right knee condition.

On September 30, 2008 appellant requested an oral hearing.

Appellant submitted reports from Dr. Meinig for the period September 5, 2008 through April 6, 2009. On September 12, 2008 Dr. Meinig stated that appellant was status post arthroscopy for an injury dating back to December 2007, when he slipped and fell on ice "with a worsening crescendo of symptoms over [the] [s]pring." On September 26, 2008 Dr. Meinig attempted to clarify the etiology of appellant's knee condition, stating that, while delivering mail on December 31, 2007, he slipped on an icy surface, twisted his right knee and fell on his right shoulder. He diagnosed an acute tear of the meniscus and opined that the condition was "completely compatible with his history of an injury on December 31, 2007."

On October 7, 2008 Dr. Meinig diagnosed a meniscus tear. On February 2, 2009 he reiterated the history of the December 31, 2007 injury and provided clinical findings, including derangement of the right knee with posterior DVT (deep vein thrombosis). On April 6, 2009 Dr. Meinig released appellant to return to work with restrictions, which included lifting no more than 25 pounds, no climbing or kneeling, twisting and sitting for no more than three hours per day, and driving for no more than two hours per day.

Appellant submitted reports and treatment notes from Dr. Roberson for the period November 3, 2008 through April 6, 2009. On November 3, 2008 Dr. Roberson stated that he was treating appellant for a knee injury suffered on December 31, 2007 when he slipped and fell at work. On November 11, 2008 he opined that appellant's ongoing limitations were directly related to the injury and treatment complications. On April 6, 2009 Dr. Roberson stated that appellant sustained a meniscal tear of the right knee at work on December 31, 2007 and that his current impairment was directly related to that injury. He indicated that appellant suffered a DVT due to a postoperative complication following arthroplasty to repair the meniscal tear.

At the March 24, 2009 hearing, appellant recounted the history of the December 31, 2007 incident, reiterating that he sustained a meniscal tear in the right knee as a result of his fall. He testified that he fell again on February 29, 2008, due to a weakness in the right knee created by the December 31, 2007 fall.

On April 23, 2009 the employing establishment contended that appellant had not established that his knee condition was caused by the December 31, 2007 fall, rather than a prior injury.[1] It argued that there were discrepancies in the evidence which cast doubt on appellant's claim.

By decision dated June 12, 2009, the Office hearing representative affirmed the denial of appellant's claim. He accepted that the incident occurred as alleged on December 31, 2007, but found that the medical evidence was insufficient to establish that the accepted incident caused his claimed right knee condition.

LEGAL PRECEDENT

The Act provides for payment of compensation for disability or death of an employee, resulting from personal injury sustained while in the performance of duty.[2] The phrase

[1] The employing establishment notes that appellant had two prior claims, including a November 13, 2006 claim for a right knee injury (File No. xxxxxx092).

[2] 5 U.S.C. § 8102(a).

"sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[3]

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," consisting of two components which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place, and in the manner alleged. The second is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[5]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[6] An award of compensation may not be based on appellant's belief of causal relationship.[7] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.[8] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[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 that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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

[3] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[4] *Robert Broome*, 55 ECAB 339 (2004).

[5] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

[6] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[7] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[8] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[9] 20 C.F.R. § 10.303(a).

and the established incident or factor of employment.[10] However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[11]

ANALYSIS

The Board finds that this case is not in posture for decision regarding whether appellant sustained a knee injury causally related to the accepted December 31, 2007 incident. The Office accepted that the December 31, 2007 fall occurred as alleged, but found that there was insufficient medical evidence to establish that appellant's right knee condition was caused by the accepted incident.

Dr. Meinig opined that appellant's right knee condition was caused by the accepted incident. On April 24, 2008 he provided a history of injury and examination findings. X-rays were unremarkable for significant osteoarthritis, and an MRI scan showed a tear of the posterior horn of the medial meniscus. Dr. Meinig diagnosed status post-traumatic meniscus tear of the right knee, resulting from a twisting-type injury and fall. On May 7, 2008 he performed a right medial meniscus degenerative tear debridement, which he noted on September 12, 2008 was for an injury dating back to December 2007, when he slipped and fell on ice. On September 26, 2008 Dr. Meinig attempted to clarify the etiology of appellant's knee condition, stating that while delivering mail on December 31, 2007, he slipped on an icy surface, twisted his right knee and fell on his right shoulder. He diagnosed an acute tear of the meniscus and opined that the condition was "completely compatible with his history of an injury on December 31, 2007." Dr. Meinig's reports contain a factual and medical history, examination findings and a specific diagnosis. Although he did not fully explain the process whereby appellant's diagnosed meniscus tear could have resulted from twisting his knee and falling, his reports generally support appellant's claim that his diagnosed condition was caused by the accepted incident.

On November 3, 2008 Dr. Roberson stated that he was treating appellant for a knee injury suffered on December 31, 2007, when he slipped and fell at work. On November 11, 2008 he opined that appellant's ongoing limitations were directly related to the injury and treatment complications. On April 6, 2009 Dr. Roberson stated that appellant sustained a meniscal tear of the right knee at work on December 31, 2007 and that his current impairment was directly related to that injury. His reports are not fully rationalized; but, they generally support appellant's claim and are consistent with his treatment for a meniscal tear of the right knee which occurred on December 31, 2007.

While none of the medical reports of appellant's attending physicians are completely rationalized, they are consistent in indicating that he sustained an employment-related right knee injury on December 31, 2007 and are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet appellant's burden of proof to establish his claim, they raise an uncontroverted inference between appellant's claimed condition

[10] *John W. Montoya*, 54 ECAB 306 (2003).

[11] *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard*, 53 ECAB 430 (2002); *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

and the accepted employment injury, and are sufficient to require the Office to further develop the medical evidence and the case record.[12] The case will be remanded to the Office to obtain a rationalized opinion from a qualified physician as to whether appellant's knee condition is causally related to the accepted incident. After such development as it deems necessary, it should issue an appropriate decision in order to protect his rights on appeal.

CONCLUSION

The Board finds that this case is not in posture for decision on whether appellant sustained an injury in the performance of duty on December 31, 2007.

ORDER

IT IS HEREBY ORDERED THAT the June 12, 2009 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for action consistent with the terms of this decision.

Issued: October 21, 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

[12] *See Virginia Richard*, *supra* note 11; *see also Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).