

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

S.P., Appellant)	
)	
and)	Docket No. 10-645
)	Issued: October 13, 2010
)	
DEPARTMENT OF DEFENSE, DEFENSE)	
DISTRIBUTION CENTER, Tracy, CA,)	
Employer)	
)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 19, 2010 appellant, through his attorney, filed a timely appeal of a November 24, 2009 merit decision of the Office of Workers' Compensation Program. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant sustained an injury on January 22, 2009 in the performance of duty.

FACTUAL HISTORY

On April 13, 2009 appellant, then a 46-year-old police officer, filed a traumatic injury claim alleging on January 22, 2009 that he sustained a right knee injury running on the treadmill in a fitness test. He stated that he was only able to run for seven minutes because his knee felt tight. Two weeks later appellant's right knee became swollen and his physician recommended surgery due to right knee prepatellar bursitis. The employing establishment stated that he did not immediately report his claim.

In a letter dated April 13, 2009, the Office requested that appellant submit additional factual and medical evidence in support of his claim. It allowed 30 days for a response.

By decision dated April 13, 2009, the Office denied appellant continuation of pay on the grounds that the injury was not reported within 30 days.¹

In an April 15, 2009 statement, appellant's supervisor, Kurt Christensen, noted that on January 22, 2009 appellant was required to participate in a mandatory physical fitness test which included running one and one-half miles. Appellant ran on a treadmill and did not complain about any knee pain. He first reported a knee condition on February 17, 2009 requesting leave due to "knee problems." Walt Murken observed appellant during the physical testing on January 22, 2009 and stated that appellant objected to participating in the test, ran for ½ mile and stopped. Appellant showed symptoms of being out of breath, attempted to run again and ultimately completed .58 miles in 7½ minutes. He did not report an injury.

In a December 9, 2008 report, Dr. Mark A. Charney, a Board-certified orthopedic surgeon, diagnosed recurrent prepatellar bursitis. He stated that appellant should not run for his physical ability test, but could walk instead. On January 9, 2009 Dr. Steven Ray Seibert, a podiatrist, recommended that appellant walk two miles rather than run for one and one-half miles. He stated that appellant had ongoing intermittent painful conditions involving his legs and feet. On April 13, 2009 Dr. Charney again diagnosed right prepatellar bursitis and tendinitis which began in April 2008. He stated, "[appellant] was advised to avoid running, but was asked to run at work. Dr. Charney tried to run, but this had exacerbated his knee pain."

On April 19, 2009 Dr. Corky Hull, Board-certified in preventative medicine, stated that on January 22, 2009 appellant suggested that he walk rather than run during the fitness test. He stated that appellant was required to run because he did not have a medical documented long-term medical restriction or disability. Dr. Hull stated that appellant discontinued the test due to general fatigue, did not complain of pain or discomfort and that symptoms due to an injury as a result of the run would likely develop within 24 to 48 hours.

By decision dated May 22, 2009, the Office denied appellant's claim finding that the medical evidence did not support a causal relationship between the fitness run on January 22, 2009 and his diagnosed condition.

Appellant, through his attorney, requested an oral hearing on September 9, 2009. He stated that he took a mandatory diagnostic physical agility test at the employing establishment on January 22, 2009 which included running on a treadmill. During the run, appellant developed tightness in his right knee and later developed sharp, stabbing pain which required him to use leave for three days. He noted that his knee condition preexisted the fitness run. Appellant used leave from February 10 through 19, 2010 and first sought medical treatment on February 16, 2009 due to the progressive increase in knee symptoms. He stated that Dr. Hull did not observe his testing.

¹ For final decisions issued by the Office on and after November 19, 2008, the Board's review authority is limited to appeals which are filed within 180 days from the date of issuance of the Office's decision. See 20 C.F.R. § 501.3(e). Therefore the Board does not have jurisdiction to review this decision.

In a February 16, 2009 note, Dr. Timothy Charles Miller, a physician, described appellant's swollen leg and history of chronic bursitis. He stated that appellant developed recurrent right knee pain, that appellant experienced "no trauma or down on knees but started to hurt yesterday...." Dr. Miller diagnosed recurrent prepatellar bursitis. On February 18, 2009 Dr. Richard Lenson, a Board-certified orthopedic surgeon, noted appellant's recurrent pain in the right knee. He stated that appellant believed that his recent flair up, which began two days previously, was related to a physical fitness test at work. Dr. Lenson diagnosed recurrent prepatellar bursitis on the right. On February 26, 2009 Dr. Charney diagnosed right knee chronic prepatellar bursitis and noted no changes in appellant's medical history. On June 17, 2009 he stated that appellant reported bilateral knee and ankle pain associated with running. Dr. Charney found that appellant's knees and ankle were normal, but that appellant reported pain. He stated, "[Appellant] probably should not run based on what he is telling me." In a note dated September 11, 2009, Dr. Charney stated:

"[Appellant] says when he ran on a treadmill for a work physical agility test on January 22, 2009, he developed swelling on his knee. He had been followed for the prepatellar bursitis previous, to this date. This condition was exacerbated by running on the treadmill at too steep an incline and too rapid a speed."

The employing establishment submitted a statement dated October 5, 2009 alleging that the treadmill was not set on an incline and that appellant set the speed for running. Appellant was required to run one and one-half miles in seven and one-half minutes and selected the speed he felt was appropriate to complete this test.

By decision dated November 24, 2009, the hearing representative found that appellant ran on a treadmill in the performance of duty on January 22, 2009, but that he failed to submit sufficient medical opinion evidence to establish a causal relationship between his employment and his diagnosed right knee condition.

LEGAL PRECEDENT

The Office defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."² To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First the employee must submit sufficient evidence to establish that he and she actually experienced the employment incident at the time, place and in the manner alleged.³ Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.⁴ A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.⁵ Medical rationale

² 20 C.F.R. § 10.5(ee).

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *J.Z.*, 58 ECAB 529 (2007).

⁵ *T.F.*, 58 ECAB 128 (2006).

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 activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.⁶

ANALYSIS

Appellant alleged that he sustained a right knee condition as a result of participating in an employing establishment physical ability test on January 22, 2009. The Office accepted that appellant ran on a treadmill for seven minutes, but found that he failed to submit medical evidence establishing a physical condition resulting from this activity.

The Board finds that appellant has not submitted medical opinion evidence to meet his burden of proof to establish his traumatic injury claim. Appellant alleged that he injured his right knee on January 22, 2009. The medical evidence establishes that he had a preexisting right knee condition of prepatellar bursitis. Appellant first sought medical treatment for the January 22, 2009 incident on February 16, 2009 from Dr. Miller who noted that appellant developed recurrent right knee pain, with no history of trauma on February 15, 2009. This report does not support appellant's claim for a traumatic injury occurring on January 22, 2009 as Dr. Miller reported that appellant's knee pain increased spontaneously on February 15, 2009. Dr. Miller did not mention the January 22, 2009 employment incident and did not suggest a causal relationship between appellant's condition and his employment.

Dr. Lenson examined appellant on February 18, 2009 for recurrent pain in the right knee. He noted that appellant attributed his current knee pain, which began in the last two days to a physical fitness test at work. Dr. Lenson did not provide the specific details of the January 22, 2009 employment incident or offer any explanation as to how appellant's current condition was due to that incident. Without medical opinion evidence supporting a causal relationship between the diagnosed condition and the employment incident, this report is not sufficient to meet appellant's burden of proof in establishing a traumatic injury claim.

Dr. Charney diagnosed right knee chronic prepatellar bursitis on February 26, but noted that there were no changes in appellant's medical history. As he did not discuss the January 22, 2009 employment incident, his report does not support appellant's claim for a traumatic injury on that date. On June 17, 2009 Dr. Charney noted that appellant reported knee pain while running. He suggested that appellant avoid running. This note again fails to provide the necessary factual history to support an injury on January 22, 2009. The Board notes that the mere diagnosis of "pain" is not a firm medical diagnosis.⁷ On September 11, 2009 Dr. Charney described the incident of January 22, 2009 to include appellant's run on a treadmill at work. He reported that appellant developed swelling in his right knee following this run. Dr. Charney opined that appellant's chronic prepatellar bursitis was exacerbated by running on the treadmill. While Dr. Charney provided a correct date of incident and opined that appellant's condition was

⁶ A.D., 58 ECAB 149 (2006).

⁷ Robert Broome, 55 ECAB 339 (2004).

exacerbated by running, this report is not sufficient to meet appellant's burden of proof. He did not base his report on a complete and accurate description of events as the employing establishment disputed that the treadmill was set on an incline and that appellant was forced to go to fast. Dr. Charney did not address the nature of appellant's right knee condition or offer any explanation of why appellant did not seek medical treatment for several weeks after the employment incident. He did not explain how the employment activity caused an exacerbation of the preexisting knee condition. Due to these deficiencies, Dr. Charney's report is not sufficient to meet appellant's burden of proof.

CONCLUSION

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish that he sustained a right knee injury on January 22, 2009.

ORDER

IT IS HEREBY ORDERED THAT the November 24, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 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