United States Department of Labor
Employees' Compensation Appeals Board

D.K., Appellant	)	
and	)	**Docket No. 11-1143**
	)	**Issued: December 5, 2011**
U.S. POSTAL SERVICE, POST OFFICE, West Bloomfield, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 13, 2011 appellant, through his representative, filed a timely appeal from the March 10, 2011 decision of the Office of Workers' Compensation Programs (OWCP), which found that he did not sustain an injury on October 17, 2006, as alleged. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on October 17, 2006, as alleged.

On appeal, appellant's attorney contends that OWCP's decision is contrary to fact and law.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This is the third appeal before the Board. On October 17, 2006 appellant, then a 48-year-old letter carrier, alleged that he slipped and fell down a handicap ramp while in the performance of duty, sustaining a torn meniscus of the left knee. In decisions dated May 2, 2009 and April 7, 2010, the Board affirmed OWCP's prior decisions denying his claim.[2] The Board found that appellant failed to submit medical evidence sufficient to establish that he sustained a work-related injury on October 17, 2006.

By letter dated December 21, 2010, appellant requested reconsideration. In support of the request, he submitted a September 13, 2010 medical report by Dr. Martin Fritzhand, a Board-certified urologist, who reviewed appellant's history and noted that appellant told him that he slipped and fell on October 16, 2006. Dr. Fritzhand noted that appellant had a magnetic resonance imaging (MRI) scan that showed a torn lateral meniscus and chondromalacia and that an arthroscope was carried out on May 1, 2007. He noted that appellant contended that he cannot carry weight due to issues with his left knee and that he had trouble walking. Dr. Fritzhand opined that there was a direct causal relationship from the history of his injury of October 16, 2006 and the results of the follow-up MRI scan some weeks later which documented a torn lateral meniscus and which necessitated surgery. He opined that appellant submitted sufficient evidence to establish that he actually experienced the employment incident at the time alleged and stated that to deny a causal relationship would be to doubt the sincerity and veracity of appellant.

By decision dated March 10, 2011, OWCP denied modification of its April 7, 2010 decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA[3] has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence,[4] including that he or she is an "employee" within the meaning of FECA[5] and that he filed his claim within the applicable time limitation.[6] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[7]

[2] Docket No. 09-2002 (issued April 7, 2010); Docket No. 08-2282 (issued May 22, 2009).

[3] 5 U.S.C. §§ 8101-8193.

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[5] *See M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); see 5 U.S.C. § 8101(1).

[6] *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); see 5 U.S.C. § 8122.

[7] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[8] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[9]

In order to satisfy the burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.[10] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.[11]

ANALYSIS

The Board previously found that appellant had not provided sufficient medical evidence to establish that his left knee condition was a result of the October 17, 2006 employment incident. The only new medical evidence submitted with appellant's most recent request for reconsideration was the October 16, 2006 report of Dr. Fritzhand who opined that there was a direct causal relationship between appellant's history of injury on October 16, 2006 and the documented torn lateral meniscus which necessitated surgery. However, the Board finds that the report of Dr. Fritzhand is not sufficiently rationalized. Dr. Fritzhand first examined appellant four years after appellant's work-related incident. He based his conclusions largely on appellant's history. Dr. Fritzhand did not offer any independent medical evaluation as to how the employment incident would have caused appellant's injuries.[12] A physician's opinion on the causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician.[13] The Board has held that medical reports lacking a rationale on causal relationship are of diminished probative value.[14] The Board finds that Dr. Fritzhand's report is insufficient to establish a causal relationship between appellant's diagnosed condition and his employment incident as Dr. Fritzhand did not provide sufficient explanation or rationale to fortify his conclusions. Accordingly, appellant did not submit sufficient evidence to modify the prior decisions denying his claim.

[8] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[9] *T.H.*, 59 ECAB 388 (2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[10] *Gary L. Fowler*, 45 ECAB 365 (1994).

[11] *Phillip L. Barnes*, 55 ECAB 426 (2004); *Jamel A. White*, 54 ECAB 224 (2002).

[12] *See E.R.*, Docket No. 09-1722 (issued March 3, 2010).

[13] *Jean Culliton*, 47 ECAB 728, 735 (1996).

[14] *I.C.*, Docket No. 09-481 (issued September 14, 2009).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not establish that he sustained an injury in the performance of duty on October 17, 2006, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 10, 2011 is affirmed.

Issued: December 5, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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