United States Department of Labor
Employees' Compensation Appeals Board

W.C., Appellant	)	
and	)	**Docket No. 10-971**
	)	**Issued: January 10, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Columbia, PA, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 23, 2001 appellant filed a timely appeal from January 20, 2010 and December 18, 2009 merit decisions of the Office of Workers' Compensation Programs. Pursuant to 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 met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on November 10, 2009.

FACTUAL HISTORY

On November 10, 2009 appellant, then a 57-year-old letter carrier, filed a traumatic injury claim alleging that on that day, while he was descending some steps after making a delivery, he sustained a sharp pain in his left knee. He stated that, as he continued his route, the pain prevented him from putting pressure on his left leg when walking on a grade or up and down steps. Appellant's supervisor noted that no one witnessed the incident and that appellant

had recently told her that he was taking pain and anti-inflammatory medication for his arthritic knees. Appellant stopped work and sought medical care on November 10, 2009.

Appellant submitted with his claim a November 10, 2009 note from Dr. Eugene J. Romano, an osteopath specializing in family practice, who wrote that he treated appellant on November 10, 2009 and determined that he possibly sustained a torn meniscus in the left knee. Dr. Romano stated that appellant's return to work was "indefinite." Appellant also submitted a November 16, 2009 return-to-work form from Dr. Robert F. Davis, Board-certified in orthopedic surgery, who noted that he saw appellant on November 16, 2009 and diagnosed him as having pain in the left knee. Dr. Davis stated that appellant could return to sedentary work.

In a letter dated November 18, 2009, the Office notified appellant that the evidence submitted was insufficient to establish his claim and advised him of the type of evidence needed to establish his claim. It requested that he submit a narrative medical report from his physician that included a well-rationalized explanation as to the cause of appellant's condition.

Appellant submitted medical records for the period June 26 to November 25, 2009. In a June 26, 2009 report, Dr. Davis noted that appellant had localized left knee pain for roughly one year and had an arthroscopy on his right knee for a medial meniscus tear six to eight months previously. He examined appellant's left knee and found some medial joint line tenderness, a positive McMurray's test with medial pain and mild to moderate medial joint space narrowing. Dr. Davis assessed that the left knee pain was suggestive of a medial meniscus tear and that there were also degenerative changes in the medial compartment**.**

A July 1, 2009 report from Dr. Peter L. Glickman, Board-certified in diagnostic radiology, advised that a left knee magnetic resonance imaging (MRI) scan showed a near-complete radial tear of the medial meniscus, a mild partial sprain of the medial collateral ligament with evidence of laxity, a chronic low grade sprain of the anterior cruciate ligament without a discontinuity, medial and patellofemoral compartment degenerative changes with Grade 3 articular cartilage loss in the medial compartment and moderate effusion.

In a July 6, 2009 report, Dr. James H. Carson, a Board-certified orthopedic surgeon and an associate of Dr. Davis, reviewed appellant's MRI scan results and stated that he was not convinced that appellant had a torn medial meniscus. He noted that appellant previously had a torn medial meniscus in the right knee and did not have the same feeling in the left knee. Dr. Carson opined that a significant portion of appellant's discomfort "may be early degenerative joint disease" and gave him a cortisone injection. In a July 16, 2009 report, Dr. Davis stated that the previous cortisone injection gave appellant "significant relief" and enabled him to return to work. He noted that appellant still had difficulties going up and down and was unable to squat. Examination of the knee revealed "pain with patellar loading with some patellar grind." On August 20, 2009 Dr. Davis stated that appellant still had medial left knee pain, but it was "much better" and "fairly well controlled" since his cortisone injection. Dr. Davis reviewed appellant's MRI scan results and opined that there was likely a radial tear of the medial meniscus.

In a report dated November 16, 2009, Dr. Davis noted that appellant experienced a sharp pain in the medial aspect of the "right" knee when he was coming down some steps on

November 10, 2009 that continued ever since.[1] Appellant stated that he had some difficulty walking and doing his job as a postal worker. An examination of the left knee showed trace effusion, some mild medial joint line pain, a positive flexion pinch test and pain medially with the McMurray test. Based on the examination, a review of the July 1, 2009 MRI scan results, and appellant's positive response to the cortisone injection, Dr. Davis concluded that appellant probably had a medial meniscus tear in the left knee with some underlying degenerative arthritis. He recommended an arthroscopy.

By decision dated December 18, 2009, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that appellant's left knee condition resulted from the November 10, 2009 incident.

Following the Office's denial of the claim, appellant submitted a response to the Office's November 18, 2009 letter. He stated that he did not sustain any other injury between the date of the incident and the date he first reported the incident to his supervisor and physician. Appellant maintained that he did not have a similar disability before the incident, but noted that he had been diagnosed with and treated for arthritis in the left knee.

Appellant submitted a December 9, 2009 report from Dr. Davis who noted treating appellant for left knee pain during the summer. Dr. Davis reported that, after receiving a cortisone injection in July 2009, appellant had done "fairly well" until he "had an injury at work on November 10, 2009 in which he was descending some steps aggravating his left knee pain." He stated that appellant's symptoms persisted, and based on previous findings of degenerative arthritis and a question of a meniscus tear based on previous MRI scans, he underwent an arthroscopy on December 3, 2009. The arthroscopy revealed a torn medial meniscus, some degenerative arthritis, and a large chondral lesion in the medial femoral condyle. Dr. Davis stated that the lesion was likely chronic in nature, but "very well may have become unstable with his recent injury, particularly given that he had been doing well for several months prior to the injury." He opined that "although his injury of November 10, 2009 likely did not specifically cause the underlying chronic pathology in the knee I believe it was a significant aggravating factor and in particular I think probably that injury led to the large chondral lesion becoming unstable causing his current problem." Dr. Davis advised that, given the arthritis in appellant's knee as well as loss of cartilage from this chondral lesion, he was likely to have ongoing left knee problems.

Appellant requested reconsideration on December 24, 2009. He also submitted a December 3, 2009 return-to-work form signed by Dr. Davis, which noted that appellant remained unable to work.

By decision dated January 20, 2010, the Office denied modification of the December 18, 2009 decision, finding that Dr. Davis' report was insufficient to establish the claim.

[1] A revised copy of the report was later submitted indicating that the physician intended to indicate that it was appellant's left knee that experienced pain.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,[3] including that he is an "employee" within the meaning of the Act[4] and that he filed his claim within the applicable time limitation.[5] 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.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing 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.[7] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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.[9]

ANALYSIS

The evidence supports that appellant walked up and down steps and on a grade while delivering mail on November 10, 2009 as alleged. However, appellant has not submitted sufficient medical evidence to establish that this work activity caused or aggravated a diagnosed medical condition in his left knee.

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[2] 5 U.S.C. §§ 8101-8193.

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

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

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

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

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

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

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Appellant submitted a December 9, 2009 report from Dr. Davis who noted the November 10, 2009 incident and stated that appellant's arthroscopy on December 3, 2009 revealed a large chondral lesion in the medial femoral condyle that he believed was "likely chronic in nature." Noting that appellant had responded favorably to a cortisone injection several months before the November 10, 2009 incident, Dr. Davis opined that the work incident "very well may have" and "probably" destabilized the lesion and caused appellant's current problems. He termed the work incident a "significant aggravating factor." Although Dr. Davis provides support for causal relationship, he premises his opinion on his finding that appellant's left knee only became symptomatic after the work incident. The Board has held that the fact that a condition worsens during a period of employment is sufficient to establish causal relationship.[10] Moreover, Dr. Davis' opinion that the work incident "very well may have" or "probably" led to instability of the chondral lesion is couched in speculative terms. The Board has held that use of such speculative terms diminish the probative value of medical opinion evidence.[11] Dr. Davis did not provide an opinion explaining the reasons why descending steps on November 10, 2009 would cause left knee symptoms and instability in the chondral lesion. The need for medical reasoning, or rationale, on this point is particularly important since the medical evidence shows that appellant had a preexisting medial meniscus tear and degenerative changes in the left knee.

Other reports from Dr. Davis either predated the November 10, 2009 work incident or did not specifically address whether the work incident caused an injury. Although Dr. Davis' November 16, 2009 narrative report acknowledged that appellant had knee pain while descending some steps on November 10, 2009, he did not state that the incident occurred while appellant was working and he did not address if a work incident caused an injury. 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.[12]

Similarly, reports from other physicians are insufficient to establish appellant's claim. Dr. Romano's November 10, 2009 treatment note did not address the cause of appellant's left knee condition while reports from Dr. Carson and Dr. Glickman predated the November 10, 2009 work incident.

For these reasons, appellant has not met his burden of proof in establishing that the November 10, 2009 work incident caused or aggravated a left knee condition.

CONCLUSION

The Board finds appellant has not established that he sustained an injury causally related to his employment on November 10, 2009.

[10] *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960). *See also T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009) (a medical opinion stating that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after is insufficient, without supporting rationale, to establish causal relationship).

[11] *See Kathy A. Kelley*, 55 ECAB 206, 211 (2004).

[12] *E.K.*, 61 ECAB ___ (Docket No. 09-1827, issued April 21, 2010).

ORDER

IT IS HEREBY ORDERED THAT the January 20, 2010 and December 18, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 10, 2011
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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