United States Department of Labor
Employees' Compensation Appeals Board

R.P., Appellant	)	
and	)	**Docket No. 10-1948**
	)	**Issued: June 3, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Knoxville, TN, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 19, 2010 appellant filed a timely appeal from June 16 and 30, 2010 decisions of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an occupational disease in the performance of duty; and (2) whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a) without a merit review.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 3, 2009 appellant, then a 63-year-old retired mail processing clerk, filed an occupational disease claim alleging that he sustained a bilateral knee condition due to prolonged standing, pivoting, turning and bending while handling heavy mailbags, tubs and parcels.[2] He became aware of his condition and its relationship to his employment on August 1, 2005. Appellant underwent arthroscopic surgery on January 13, 2006 and was scheduled for bilateral knee joint surgery on November 6, 2009. The employing establishment controverted his claim questioning if it was timely filed and whether job duties caused an injury.[3]

In a November 17, 2009 letter, the Office informed appellant that additional evidence was needed to establish his claim. It gave him 30 days to submit a statement detailing the work factors that contributed to his condition and medical reports describing symptoms, examination results, diagnosis and treatment provided and offering a physician's reasoned opinion as to how the work factors caused the injury. Appellant did not respond.

By decision dated January 6, 2010, the Office denied appellant's claim, finding the evidence insufficient to establish that he actually experienced the work factors specified and that his alleged condition resulted from such factors.

Appellant requested reconsideration on May 3, 2010 and provided several medical records. In a December 12, 2005 report, Dr. Paul L. Becker, a Board-certified orthopedic surgeon, attended to complaints of bilateral knee pain and discomfort. He examined appellant and observed significant medial joint line tenderness and patellofemoral crepitus, pointing out that the left knee appeared more symptomatic. X-rays revealed mild osteoarthritic changes. Dr. Becker diagnosed mild osteoarthritis and possible medial meniscal tears of both knees.

A December 14, 2005 magnetic resonance imaging (MRI) scan report from Dr. Andrew Evancho, a Board-certified diagnostic radiologist, noted a medial meniscal tear of the right knee with adjacent osteoarthritic changes, mild chondromalacia patella and varicose veins. Dr. Becker addressed these findings in a January 6, 2006 report, adding that an MRI scan of appellant's left knee showed a medial meniscal tear and an incomplete fracture or bone bruise in the medial femoral condyle and tibial plateau. He recommended arthroscopic surgery, which he performed on January 13, 2006. Dr. Becker postoperatively diagnosed bilateral medial meniscal tears and Grade 2 and 3 chondromalacia in a January 13, 2006 surgical note and remarked that appellant's incisions healed well in a January 23, 2006 follow up.

In a February 13, 2006 report from Dr. Becker, appellant presented significant right knee pain and swelling. Appellant was referred to Dr. Frederick M. McLean, a Board-certified diagnostic radiologist, for a February 13, 2006 ultrasound evaluation, which ruled out deep venous thrombosis in the right leg. On February 27, 2006 Dr. Becker observed bilateral pitting edema and opined that appellant probably had a significant venostasis disease that was

[2] Appellant retired effective October 31, 2009.

[3] It was reported that appellant was last exposed to the conditions alleged to have caused his condition on October 31, 2009. *See William C. Oakley*, 56 ECAB 519 (2005).

aggravated by the previous arthroscopy. Medical records for the period March 31, 2006 to June 18, 2009 indicated that appellant received a series of cortisone injections and viscosupplementation. In particular, a September 2, 2008 report signed by a physician's assistant related that his pain intensified "over the last several weeks with his work."

In a September 16, 2009 report, Dr. Becker noted that appellant's complaints of medial joint line pain and tenderness. Appellant agreed to undergo bilateral unicondylar arthroplasty, which was performed on November 6, 2009. A November 6, 2009 surgical pathology report from Dr. Margaret A. Batt, a Board-certified anatomic and clinical pathologist, preoperatively diagnosed bilateral medial joint osteoarthritis. In November 6 and 10, 2009 surgical and discharge notes, Dr. Becker stated that appellant progressed well after the procedure.

A November 13, 2009 note signed by a physician's assistant found that appellant had pitting edema in the legs. Appellant was referred to Dr. George F. Tolhurst, a Board-certified radiologist, for a November 13, 2009 ultrasound evaluation, which ruled out deep venous thrombosis. Subsequent medical reports from Dr. Becker for the period November 20, 2009 to January 12, 2010 detailed that appellant's condition improved significantly since the arthroplasty.

In an April 12, 2010 report, Dr. Becker recalled that appellant's initial arthroscopic surgery did not relieve his bilateral knee pain. He opined that appellant's "continual use of his knees as a postman" and osteoarthritis rendered the procedure ineffective. Dr. Becker also concluded, "[Appellant]'s work situation and his genetic code predisposed him to the need for replacement."

In a June 16, 2010 decision, the Office modified the January 6, 2010 decision. While determining that the evidence supported that appellant experienced the work factors described, it denied his claim finding the medical evidence insufficient to demonstrate that his bilateral knee condition was caused or aggravated by these factors.

Appellant requested reconsideration on June 23, 2010, but did not submit any additional evidence. By decision dated June 30, 2010, the Office denied his request on the grounds that it did not receive new and relevant evidence warranting further merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Act has the burden of establishing 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[4] These are the essential elements of each and every

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.[6] To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[7]

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.[8]

ANALYSIS -- ISSUE 1

The evidence supports that appellant handled heavy mailbags, tubs and parcels at work, which entailed prolonged periods of standing, pivoting, turning and bending. In addition, appellant was diagnosed as having bilateral medial meniscal tears, medial joint osteoarthritis and chondromalacia. However, he did not provide sufficient medical evidence establishing that these employment duties caused or aggravated his condition.

Dr. Becker stated in an April 12, 2010 report that appellant's injuries necessitated a January 13, 2006 bilateral arthroscopy, which was unsuccessful and a November 6, 2009 bilateral unicondylar arthroplasty. He opined that appellant's continual, on-the-job use of his knees and genetic predisposition resulted in the ineffectiveness of the first procedure and the eventual need for joint replacement. Dr. Becker, however, failed to provide medical rationale explaining how standing, pivoting, turning or bending was competent to cause or aggravate his condition.[9] A medical opinion not fortified by medical rationale is of little probative value.[10] The

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] *See S.P.*, 59 ECAB 184, 188 (2007).

[7] *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see R.R.*, Docket No. 08-2010 (issued April 3, 2009).

[8] *I.J.*, 59 ECAB 408, 415 (2008); *Woodhams*, *supra* note 5 at 352.

[9] *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994). Furthermore, Dr. Becker did not identify these specific contributing factors. *See John W. Montoya*, 54 ECAB 306, 309 (2003) a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to diagnosed medical condition).

[10] *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

need for rationale is particularly important in this case as the record shows that appellant had preexisting osteoarthritis. Dr. Becker's records for the period December 12, 2005 to January 12, 2010, as well as the radiological and diagnostic reports from Drs. Batt, Evancho McLean and Tolhurst, are of limited probative value as none of them offered any opinion regarding the cause of injury.[11]

Also submitted were various medical documents signed by a physician's assistant, including the September 2, 2008 note relating that the diagnosed condition worsened due to employment. This evidence has no probative value because a physician assistant is not a "physician" as defined by the Act.[12] In the absence of well-reasoned medical opinion explaining causal relationship between specific employment factors and the diagnosed knee conditions, appellant failed to meet his burden.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[13] the Office's regulations provide that the evidence or argument submitted by a claimant must either: (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.[14] Where the request for reconsideration fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[15]

ANALYSIS -- ISSUE 2

The Office's June 16, 2010 merit decision denied the claim on the grounds that the medical evidence did not establish that employment factors caused or aggravated a bilateral knee condition. Appellant requested reconsideration on June 23, 2010, but did not submit any additional evidence before the issuance of the June 30, 2010.[16] Moreover, he neither contended that the Office erroneously applied or interpreted a specific point of law nor advanced a relevant legal argument not previously considered by the Office. As appellant did not submit evidence or

[11] *See J.F.*, Docket No. 09-1061 (issued November 17, 2009) (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] 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551, 554 (2002). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).

[13] *Id*. at § 8128(a).

[14] *E.K.*, Docket No. 09-1827 (issued April 21, 2010). *See* 20 C.F.R. § 10.606(b)(2).

[15] *L.D.*, 59 ECAB 648 (2008). *See* 20 C.F.R. § 10.608(b).

[16] The Board notes that appellant submitted new evidence to the Office after issuance of the June 30, 2010. The Board lacks jurisdiction to review evidence for the first time on appeal. 20 C.F.R. § 501.2(c). This, however, does not preclude appellant from having such evidence considered by the Office as part of a formal written request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

argument satisfying any of the three regulatory criteria for reopening a claim, the Office properly denied his application for reconsideration without reopening the claim for a review on the merits.

CONCLUSION

The Board finds that appellant did not establish that he sustained an occupational disease in the performance of duty. Furthermore, the Board finds that the Office properly denied his requests for reconsideration under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the June 30 and 16, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 3, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board