United States Department of Labor
Employees' Compensation Appeals Board

R.L., Appellant **and** **DEPARTMENT OF VETERANS AFFAIRS, SOUTHERN NEVADA HEALTHCARE SYSTEM, Las Vegas, NV, Employer**	**Docket No. 10-1516** **Issued: May 2, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On May 11, 2010 appellant filed a timely appeal from an April 23, 2010 merit decision 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 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 January 27, 2006.

FACTUAL HISTORY

This case has previously been before the Board. On February 5, 2010 the Board set aside the Office's May 20, 2009 decision, which denied appellant's application for reconsideration as untimely filed as the request was made within one year of the Office's decision. The Board

[1] 5 U.S.C. § 8101 *et seq.*

directed the Office to conduct a merit review to preserve appellant's appeal rights.[2] The facts of the case as set forth in the Board's prior decision are hereby incorporated by reference.

Before issuance of the Office's initial November 30, 2007 merit decision, appellant submitted medical evidence. This included a March 7, 2006 magnetic resonance imaging (MRI) scan report from Dr. Tien Ahn Wee, a Board-certified radiologist, showing probable right medial meniscal tearing, medial compartment chondromalacia, bursitis, joint effusion and "metallic susceptibility artifact involving the proximal tibia consistent with prior surgery." In a March 16, 2006 progress note from Dr. Valerie T. Schram, an internist, appellant mentioned that he experienced constant pain whenever he walked and "[i]t feels like water in the knee." Dr. Schram assessed right knee pain and ordered a brace.

In an October 5, 2006 report from Dr. Victoria T. Smith, a Board-certified physiatrist, appellant presented degenerative joint disease of the right knee with posterior and anterior horn tears of the medial meniscus and articular cartilage loss with bursitis and traumatic arthritis. Appellant related that he sustained the injury while kneeling at a January 2006 ground blessing ceremony for the employing establishment. He previously fractured his right femur and tibia as a result of an automobile accident in 1982. Dr. Smith examined appellant and observed significant effusion. She noted that radiological evidence showed degenerative medial and lateral meniscal tears and diagnosed traumatic arthritis of the right knee.

In an October 17, 2006 report from Dr. Robert J. Tait, a Board-certified orthopedic surgeon, appellant complained that his right knee popped on January 27, 2006 when he tried to stand up from a kneeling position. He noted that appellant underwent open reduction internal fixation surgery for the right tibia in 1982. Dr. Tait examined appellant and found medial joint line tenderness, mild effusion and a positive McMurray test. An October 17, 2006 x-ray revealed no soft tissue or bony abnormalities while an MRI scan showed a medial meniscal tear and degenerative changes involving the medial tibial plateau. Dr. Tait diagnosed medial meniscal tear and advised an arthroscopic meniscectomy.[3]

A February 2, 2007 surgical report indicated that Dr. Tait performed a right knee arthroscopy with limited synovectomy, chondroplasty of the medial femoral condyle and partial medial meniscectomy. He diagnosed medial meniscus tear and Grade 4 chondromalacia of the medial femoral condyle. In a February 13, 2007 follow-up report, Dr. Tait observed joint tenderness and swelling with some limited range of motion.

An April 26, 2007 left knee x-ray report from Dr. Ashu Sharma, a Board-certified diagnostic radiologist, demonstrated an old fracture deformity of the distal femur and mild medial femorotibial and patellofemoral joint space narrowing.[4]

In a May 4, 2007 report from Dr. Tait, appellant complained of pain "inferior to the [right] patella" and in his left leg, the latter due to compensation for the right knee. Dr. Tait examined him and observed mild tenderness, swelling and effusion of the right knee joint as well

[2] Docket No. 09-1459 (issued February 5, 2010).

[3] Dr. Tait replicated these findings in a January 31, 2007 report.

[4] As appellant did not allege a left knee injury in his original claim, this condition was not at issue in this case.

as limited extension and flexion. He diagnosed right knee osteoarthritis and tricompartmental chondromalacia based on a May 4, 2007 x-ray and advised total knee arthroplasty. In a June 20, 2007 report, Dr. Tait did not detail any changes in his earlier findings and scheduled appellant's procedure for June 25, 2007.

A June 18, 2007 surgical clearance report from Dr. Darby A. Clayson, a Board-certified internist, noted that appellant sustained an injury "when he went down on his right knee during the new … hospital ground-breaking ceremony last year [January 2006], hit a rock and could n[o]t get up because of back pain." Appellant thereafter experienced progressive knee pain.

In a September 13, 2007 report, Dr. Tait related that appellant sustained a medial meniscal tear in the right knee "while kneeling" and "performing the ground blessing ceremony" on January 27, 2006. He noted the results of Dr. Wee's March 7, 2006 MRI scan report on which he based his recommendation for arthroscopy with medial meniscectomy. Dr. Tait diagnosed right knee osteoarthritis, medial meniscal tear and pain and concluded, "It is my medical opinion that the meniscal injuries were due to the patient kneeling at the ground blessing ceremony which led patient to need a total knee arthroplasty." In addition, appellant provided notes signed by nurses, physician assistants and physical therapists between March 16, 2006 and September 23, 2007.

After issuance of the Office's November 30, 2007 merit decision and the May 20, 2009 decision denying his request for reconsideration, appellant also submitted a September 26, 2007 report from Dr. Tait.[5]

On April 23, 2010 the Office denied modification of its November 30, 2007 decision.

LEGAL PRECEDENT

An employee seeking compensation under the Act has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,[6] including that he is an "employee" within the meaning of the Act and that he filed his claim within the applicable time limitation.[7] 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.[8]

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 actually experienced the employment incident at

[5] Dr. Tait's September 26, 2007 report added the following sentence: "At this time, the patient is unemployable." Otherwise, it was completely identical to his earlier September 13, 2007 report.

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

[7] *R.C.*, 59 ECAB 427 (2008).

[8] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[9]

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.[10]

ANALYSIS

The evidence supports that appellant knelt on his right knee and placed weight on his right leg to stand during the employing establishment's ground blessing ceremony on January 27, 2006. The Board finds he did not submit sufficient medical evidence to establish that this work incident caused or contributed to his right knee condition.

In an October 17, 2006 report, diagnosing a medial meniscal tear, Dr. Tait commented that appellant felt his right knee pop on January 27, 2006 when he attempted to stand up from a kneeling position. He later specified that appellant had knelt to perform a ground blessing ceremony and that this action tore his meniscus, necessitating a February 2, 2007 arthroscopy with medial meniscectomy and eventually a June 25, 2007 total right knee arthroplasty. Dr. Tait, however, failed to provide sufficient reasoning to explain the pathophysiological process by which kneeling and standing caused the injury. Medical opinion not fortified by medical rationale is of diminished probative value.[11] The need for such rationale is particularly important in this case where the medical evidence, including Dr. Tait's October 17, 2006 report, recognized that appellant had a preexisting right tibia condition. Dr. Tait's other reports, all of which were authorized between appellant's February 2 and June 25, 2007 surgeries, were of diminished probative value since none offered an opinion regarding the cause of injury.[12]

Drs. Smith, Clayson and Schram stated in their respective reports that appellant sustained a right knee injury in January 2006 when he knelt during the ground blessing ceremony. Although the physicians generally supported causal relationship, none provided any fortifying medical rationale. Furthermore, Dr. Schram's March 1 and 16 and April 17, 2006 reports, as well as Dr. Shaikh's reports for the period December 16, 2007 to July 17, 2008, failed to offer any opinion on the matter. The physicians did not explain why appellant's kneeling and standing at the January 27, 2006 ceremony caused or aggravated a right knee condition.

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[9] *T.H.*, 59 ECAB 388 (2008).

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

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

[12] *See J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009). Furthermore, these remaining reports failed to identify the January 27, 2006 ground blessing ceremony. *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 the diagnosed medical condition).

The medical notes signed by nurses, physician assistants and physical therapists for the period March 16, 2006 to July 17, 2008 do not constitute competent medical evidence because none of these individuals was a "physician" as defined under the Act.[13]

Appellant contends on appeal that the Office failed to review the evidence that he submitted on reconsideration. As noted, the medical evidence of record is insufficient to establish that the January 27, 2006 kneeling incident caused appellant's right knee injury.

CONCLUSION

The Board finds that appellant did not establish that he sustained a traumatic injury in the performance of duty on January 27, 2006.

ORDER

IT IS HEREBY ORDERED THAT the April 23, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 2011
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

[13] 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238, 242 (2005) (nurses and physician assistants); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).