

required total knee replacement surgery.² In an October 21, 2008 statement, appellant described his custodial duties, which included a significant amount of walking, stooping, bending, leaning, and carrying supplies, tools and equipment around the facility eight hours a day, five days a week. Two weeks earlier, he allegedly began experiencing a “fairly continuous amount of right knee pain.”

In a November 3, 2008 letter, the Office informed appellant that the evidence submitted was insufficient to establish his claim. It advised him to provide a narrative report from his physician containing a diagnosis and an opinion explaining how his right knee condition was causally related to the identified employment activities.

In a September 8, 2008 disability slip, Dr. Avan Solomon, a Board-certified osteopath, specializing in family medicine, stated that appellant had a history of degenerative joint disease (DJD) and low back pain involving his knee. He indicated that appellant was unable to work on August 31, 2008 due to knee pain.

In an October 14, 2008 report, Dr. Brian Duncan, a treating physician, noted a history of right knee pain and degenerative joint disease. He related that appellant had undergone reconstruction of the right anterior cruciate ligament (ACL) and multiple arthroscopies without any resolution of his right knee pain. Dr. Duncan stated that appellant’s work as a custodian in the postal service involved quite a bit of walking. Examination of the right lower extremity revealed no significant joint effusion but some notable quadriceps atrophy when compared to his left side. Appellant had crepitus with range of motion. X-rays of the right knee showed significant medial joint line narrowing with previous placed bone tunnel interference screws in stable position. There was a significant amount of patella osteophyte and patellofemoral arthrosis. Dr. Duncan diagnosed degenerative joint disease of the right knee. In an October 28, 2008 addendum, he stated that appellant had DJD of right knee secondary to long-standing ACL deficiency and resultant instability. Surgical options and risks were discussed with the patient.

The employing establishment controverted appellant’s claim. On November 12, 2008 Michael S. Mays, acting supervisor of maintenance, stated that appellant informed him on November 10, 2008 that he had a history of DJD of the right knee for approximately seven to eight years and would be undergoing knee replacement surgery in January 2009. He also stated that appellant “rehab” houses on the side. On November 12, 2008 Tyrone Gutierrez, a supervisor, stated that appellant worked other jobs to earn extra income, including home repair work and driving. The record also contains a position description for a laborer/custodian.

In a decision dated December 31, 2008, the Office denied appellant’s claim on the grounds that the medical evidence failed to demonstrate that the claimed medical condition was causally related to the established events.

On January 16, 2009 appellant requested a review of the written record.

² Appellant has filed several claims with the Office, including: an August 2, 2002 traumatic injury claim (File No. xxxxxx894), which was accepted for neck sprain and carpal tunnel syndrome; a September 14, 2004 traumatic injury claim (File No. xxxxxx159), which was accepted for lumbar sprain and closed dislocation of lumbar vertebrae; and a May 14, 2009 traumatic injury claim (File No. xxxxxx257) for a right knee injury.

By decision dated May 19, 2009, an Office hearing representative affirmed the December 31, 2008 decision, finding that the medical evidence was insufficient to establish a causal relationship between accepted employment activities and a diagnosed condition.

On December 17, 2009 appellant submitted a request for reconsideration. In a December 23, 2009 report, Dr. Duncan noted that appellant's job as a custodian involved heavy manual labor, in addition to much walking, lifting and climbing. He indicated that appellant had sustained a right knee ligament injury in the military and had undergone reconstructive surgery in 1994. Dr. Duncan continued to experience knee injuries at work, the most recent incident having occurred on May 14, 2009. X-rays showed moderate to severe arthritis of the right knee. Dr. Duncan stated:

“In these matters it is difficult to determine causality, but it seems that at the very least, [appellant's] job with the USPS aggravated a previously stable condition. Secondly, in someone with a surgically reconstructed knee early arthritis is not an uncommon sequelae. A labor-intensive, demanding job and recurrent injuries could certainly accelerate this process.”

By decision dated March 11, 2010, the Office denied modification of its previous decision, finding that there was no evidence of a diagnosed condition that was causally related to accepted employment activities.

On April 28, 2010 appellant, through his representative, requested reconsideration. In support of his request, he submitted reports from the Veterans Administration Medical Center for the period August 21, 1999 through December 24, 2009, including physicians' reports, nursing notes, results of laboratory tests and x-ray reports relevant to appellant's right knee condition. The record reflects that appellant underwent numerous surgeries on his right knee, including reconstructive surgery in 1999 and 2004. The records indicate that appellant sustained an injury to his right knee in 1994 while in boot camp. On August 24, 1999 Dr. Karen Koupal, a treating physician, diagnosed internal derangement of the right knee, noting that appellant underwent arthroscopic surgery pursuant to a right knee injury sustained while delivering mail on August 21, 1999. On August 18, 2000 Dr. Alexander Bailey, a Board-certified orthopedic surgeon, stated that appellant continued to experience some disability due to severe arthritis in his right knee after injuring himself at work and noted that his condition was “somewhat irritated by his work.”

On March 20, 2002 Dr. James Armstrong stated that appellant was functioning well at work at his own pace. X-rays revealed no significant progression of his condition since 1997. On May 19 and 26, 2006 Dr. Armstrong diagnosed right knee degenerative arthrosis.

In a December 29, 2003 report, Dr. Pamela S. Harris, a Board-certified physiatrist, noted appellant's history of right knee pain and previous surgeries. She stated that he worked at the employing establishment and was on his feet all day. Examination of the right knee revealed bilateral crepitus, mild bony deformity, no muscle atrophy or instability and 5/10 pain. X-rays showed marked degenerative changes in the medial compartment and patellofemoral joint. Dr. Harris diagnosed degenerative joint disease of the bilateral knees.

The record contains progress notes from Dr. Solomon for the period January 27, 2006 through December 24, 2009. On January 27, 2006 Dr. Solomon noted appellant's history of degenerative joint disease and traumatic arthritis. X-rays of the right knee, when compared to a July 21, 2003 x-ray, revealed unchanged osteoarthritis and stable postsurgical appearance. On May 14, 2009 Dr. Solomon noted that appellant was experiencing chronic right knee pain. He stated that appellant was sweeping on the job when he twisted his leg, felt a pop and had instant pain in his right knee. He provided examination findings and diagnosed knee strain and degenerative joint disease.

By decision dated July 30, 2010, the Office denied modification of the March 11, 2010 decision, finding that the medical evidence was insufficient to establish a causal relationship between the accepted employment activities and the diagnosed knee condition.

LEGAL PRECEDENT

An employee seeking benefits under the Act³ has the burden of establishing the essential elements of his claim, including the fact that an injury was sustained in the performance of duty as alleged,⁴ and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.⁵

Under the Act, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.⁶ When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.⁷ If the employment exposure causes a permanent condition, the employee may be entitled to continuing compensation;⁸ a medical restriction that is based on a fear of future aggravation due to employment exposure is not an injury under the Act and therefore no compensation can be paid for such a possibility.⁹

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and manner alleged. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

⁵ *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

⁶ *Raymond W. Behrens*, 50 ECAB 221, 222 (1999); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁷ *Id.*

⁸ *James C. Ross*, 45 ECAB 424, 429 (1994); *Gerald D. Alpaugh*, 31 ECAB 589, 596 (1980).

⁹ *Carlos A. Maurero*, 50 ECAB 117, 119 (1998); *Gaetan F. Valenza*, 39 ECAB 1349, 1356 (1988).

ANALYSIS

Appellant did not allege that his employment activities caused his right knee condition. Rather, he contended that his custodial duties, which included a significant amount of walking, stooping, bending, leaning, and carrying supplies, tools and equipment around the large facility eight hours per day, five days per week, aggravated the condition. The medical evidence of record supports his claim. The Board finds that this case is not in posture for decision regarding whether appellant sustained an aggravation of his preexisting right knee condition in the performance of duty.

An employee who claims benefits under the Act has the burden of establishing the essential elements of his claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.¹⁰ However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.¹¹

In his October 4, 2008 report, Dr. Duncan provided a history of injury and treatment, detailed examination findings and a definitive diagnosis, which included degenerative joint disease and moderate to severe arthritis of the right knee. His December 23, 2009 report reflected an understanding of appellant's job as a custodian, which involved heavy manual labor, in addition to much walking, lifting and climbing. Dr. Duncan stated that appellant continued to experience knee injuries at work, the most recent incident having occurred on May 14, 2009. While noting the difficulty in determining causality, he opined that "at the very least," appellant's position at the employing establishment "aggravated a previously stable condition." Dr. Duncan further explained that in someone with a surgically reconstructed knee, early arthritis is not an uncommon sequelae and that a labor-intensive, demanding job and recurrent injuries could certainly accelerate this process. While his report is not completely rationalized, it strongly supports appellant's claim that his right knee condition was aggravated by his employment activities.

Dr. Solomon's reports reflect a worsening of appellant's right knee condition as he continued to work at the employing establishment. On January 27, 2006 he noted appellant's history of degenerative joint disease and traumatic arthritis. X-rays of the right knee, when compared to a July 21, 2003 x-ray, revealed unchanged osteoarthritis and stable postsurgical appearance. On May 14, 2009 Dr. Solomon indicated that appellant was experiencing chronic right knee pain, stating that while sweeping on the job, appellant twisted his leg, felt a pop and had instant pain in his right knee. As he did not provide an opinion as to the cause of appellant's

¹⁰ See *Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); see also *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

¹¹ *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard*, *supra* note 10; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

diagnosed condition, his reports are of limited probative value on that issue.¹² They do support appellant's factual allegations regarding the nature of his job duties and continued strain on his right knee as a result of those duties.

On August 18, 2000 Dr. Bailey stated that appellant continued to experience some disability due to severe arthritis in his right knee after injuring himself at work and noted that his condition was "somewhat irritated by his work." His report is also insufficient to establish appellant's claim, as it does not contain an opinion as to the cause of appellant's condition. However, it supports appellant's claim that his right knee condition was aggravated by his job duties.

The remaining medical evidence of record includes nursing notes, which do not constitute competent medical evidence,¹³ as well as physicians' reports, results of laboratory tests, x-ray reports and other reports from Veterans Administration Medical Center, which do not provide an opinion on how appellant's current right knee condition is causally related to the accepted work activities. Although these reports are insufficient to establish the required causal relationship, they generally reflect a worsening of appellant's right knee condition as he performed his custodial duties.

The Board notes that, while none of the reports of appellant's attending physicians is completely rationalized, they are consistent in indicating that he sustained, or experienced an aggravation of, an employment-related right knee condition, and are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet his burden of proof to establish his claim, they raise an uncontroverted inference between appellant's claimed condition and the identified employment factors, and are sufficient to require the Office to further develop the medical evidence and the case record.¹⁴

On remand the Office should prepare a statement of accepted facts which includes a detailed employment history, job descriptions for each position held and specific functions performed by appellant in each position. It should submit the statement of accepted facts to appellant's treating physician, or to a second opinion examiner, in order to obtain a rationalized opinion as to whether his current condition is causally related to factors of his employment, either directly or through aggravation, precipitation or acceleration.

¹² Medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *A.D.*, 58 ECAB 149 (2006); *Michael E. Smith*, 50 ECAB 313 (1999).

¹³ Nurses do not qualify as "physicians" under the Act. Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law."

¹⁴ See *Virginia Richard*, *supra* note 10; see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant sustained right knee injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the July 30, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: May 23, 2011
Washington, DC

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

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

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