

FACTUAL HISTORY

On February 13, 2008 appellant, then a 47-year-old deputy marshal, filed an occupational disease claim (Form CA-2) alleging that he developed degenerative knee conditions and a torn meniscus which he attributed to factors of his federal employment. A physician suggested that it was caused by his physical work requirements.

By letter dated May 10, 2010, OWCP requested additional evidence from appellant to support his claim and allotted 30 days for submission.

In a May 19, 2010 letter to OWCP, the employing establishment stated that appellant's job requirements included lifting, pushing, pulling, bending and stooping. It noted that a deputy marshal must maintain a level of fitness and that he was an active participant in a fitness program (FIT) and was allowed up to three work hours a week to maintain his fitness level. The employing establishment attached a position description and a copy of its fitness directive.

On June 2, 2010 appellant's attorney requested a 30-day extension for his physician to submit medical evidence in support of the claim.

On June 7, 2010 OWCP granted appellant's request for an additional 30 days to submit medical evidence.

By decision dated July 15, 2010, OWCP denied appellant's claim on the grounds that the medical evidence submitted did not establish a firm diagnosis causally related to the implicated employment factors.

On July 26, 2010 appellant's attorney requested an oral telephone hearing before OWCP's hearing representative and submitted additional evidence.

In a February 13, 2008 note, Dr. Clifford H. Turen, a Board-certified orthopedic surgeon, advised that he saw appellant for left knee pain. He did not list an employment history or date of examination. Dr. Turen found joint line tenderness, a positive Apley Grind test and a positive McMurray's sign. He reported that an undated magnetic resonance imaging (MRI) scan revealed a tear of the medial meniscus. Dr. Turen stated that it was not uncommon for a patient to feel additional secondary pain from degenerative changes after an arthroscopy, which appellant underwent, once the primary cause of the pain in the knee is removed. He opined that it was without question that appellant's torn meniscus and degenerative changes were from "long[-]standing physical use" which was in line with the conditioning requirements of his federal employment.

Appellant also submitted a narrative statement and a document listing workers' compensation benefits for FIT-related injuries and approved activities.

On November 3, 2010 an oral telephone hearing was held before OWCP's hearing representative. Appellant testified that he injured his left knee while running on the road in the course of his federal employment. For the past 22 years, he had been running in order to fulfill his job's fitness requirement. On November 6, 2006 appellant injured his left knee collateral ligament while he was jogging in his neighborhood and underwent surgery in May 2007. He

returned to work and on August 7, 2007, tore his left meniscus again while running on a treadmill in the employing establishment gym. Appellant had a second knee surgery in January 2008 and returned to work. Neither of these traumatic injury claims was accepted by OWCP. Appellant claimed 600 hours of wage-loss compensation for the time lost due to his two left knee surgeries. OWCP's hearing representative granted appellant's request to hold the record open for 30 days for the submission of additional evidence. None was received.

By decision dated January 12, 2011, OWCP's hearing representative affirmed the July 15, 2010 decision. He found that while it was accepted that the extensive running performed by appellant was incurred in the performance of his federal duties, the medical evidence submitted was not sufficient to establish a causally-related left knee condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA and that an injury³ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (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.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the implicated employment factors.⁶ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be

² 5 U.S.C. §§ 8101-8193.

³ OWCP's regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁴ See *J.C.*, Docket No. 09-1630 (issued April 14, 2010). See also *Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *Id.* See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁶ See *D.N.*, Docket No. 10-1762 (issued May 10, 2011).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁷

ANALYSIS

The Board finds that appellant has failed to establish that he developed a degenerative knee condition in the performance of duty. The record reflects that appellant has a torn meniscus and degenerative changes of the left knee. Appellant's federal employment required lifting, pushing, pulling, bending and stooping and a physical fitness level which he maintained by extensive running. He has not established that the torn meniscus or degenerative changes of the left knee are causally related to these factors of his federal employment.

In a February 13, 2008 report, Dr. Turen reported that an MRI scan revealed a tear of the medial meniscus. He opined that it was without question that appellant's torn meniscus and degenerative changes were from "long[-]standing physical use" which was in line with conditioning requirements of his federal employment. Dr. Turen did not provide a rationalized medical opinion explaining how specific factors of appellant's federal employment, such as lifting, pushing, pulling, bending, stooping, extensive running, caused or aggravated his left knee condition or how his condition arose. Moreover he did not present a history of appellant's medical treatment for his left knee or dates of examination. The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between his condition and his employment factors.⁸ Lacking thorough medical rationale on the issue of causal relationship, the medical report of Dr. Turen is insufficient to establish that appellant sustained an employment-related injury.

Appellant has not submitted sufficient rationalized medical evidence to support his claim that he sustained a left knee condition causally related to the implicated employment factors. The Board finds that he failed to meet his burden of proof to establish a claim for compensation.

On appeal, appellant's attorney contends that the January 12, 2011 OWCP decision is contrary to fact and law. For the reasons stated above, the Board finds the attorney's argument is not substantiated.

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 failed to meet his burden of proof to establish that he developed a left knee condition in the performance of duty causally related to factors of his federal employment.

⁷ See *D.E.*, Docket No. 07-27 (issued April 6, 2007). See also *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *Id.* See also *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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