United States Department of Labor
Employees' Compensation Appeals Board

R.S., Appellant	)	
and	)	**Docket No. 11-323**
	)	**Issued: September 15, 2011**
DEPARTMENT OF THE AIR FORCE, OFFUTT AIR FORCE BASE, Bellevue, NE, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 22, 2010 appellant filed a timely appeal from the September 21, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a left knee injury causally related to his employment on July 31, 2009.

FACTUAL HISTORY

On August 12, 2009 appellant, then a 58-year-old painter, filed a traumatic injury claim alleging that he sustained a left knee injury at work on July 31, 2009 while he was kneeling and

[1] 5 U.S.C. § 8101 *et seq.*

cutting wallpaper. His supervisor stated that the claimed injury did not occur in the performance of duty, noting that fellow employees reported that appellant complained all day of left leg pain, which he attributed to hauling rocks while at home.

In a letter dated August 20, 2009, OWCP informed appellant that the employing establishment had controverted his claim. It advised him that the information submitted was insufficient to establish his claim and requested additional information, including a detailed account of the alleged injury and a physician's report, with a diagnosis and a rationalized opinion as to the cause of the diagnosed condition. Appellant was also asked to respond to his supervisor's allegation that he injured his left leg while hauling rocks at home.

The employing establishment submitted August 26, 2009 statements from coworkers Thomas Prada, Brad Graham and James Sietsena. Mr. Prada stated that, during the week of July 27, 2009, appellant told coworkers in the break room that his back and leg were sore as a result of moving 60- or 70-pound rocks over the weekend. Mr. Graham indicated that appellant bragged to everyone at the paint shop during a morning meeting that he "hurt [h]is [l]eg moving 60[-pound] rocks" at home. Mr. Sietsena stated that appellant told him he was limping because he had been moving large rocks at his home.

In an undated statement, Supervisor Lloyd L. Richards indicated that appellant informed him on August 3, 2009 that he "got a real bad pain" in his knee on July 31, 2009 when he knelt down while hanging wallpaper. On August 5, 2009 he asked appellant whether he had told his coworkers that he injured himself while moving rocks at home. Appellant responded by stating that he was not sure when he hurt his knee and that he had been moving rocks at home for about two weeks and his back and knees were really stiff.

Appellant submitted an August 2, 2009 emergency department report, signed by a physician's assistant, reflecting that he injured his right leg at work while painting.

On August 26, 2009 appellant responded to OWCP's request for additional information. He acknowledged that he told fellow employees he had cramping and stiffness in his calf muscles and slight pain along the outside edge of the knee after he installed a stone path at his home on July 25, 2009. Appellant worked for three hours digging holes and moving 60-pound rocks. He alleged that immediately following his July 31, 2009 left knee injury, he applied ice to, rested and elevated the knee. Appellant experienced a sharp pain in his left ankle, as well as inside and behind the left knee, when he started his truck after work.

Appellant was treated by Dr. George Hutfless, a Board-certified internist. On August 3, 2009 Dr. Hutfless reported that appellant experienced pain in the lateral aspect of the left lower extremity just below the knee. Examination revealed tenderness in the lateral aspect of the knee. Dr. Hutfless diagnosed probable tear of tendon insertion of the left knee. August 10, 2009 progress notes reflect that appellant was unable to extend the knee and it was swollen and tender in the lateral aspect. In an August 12, 2009 report, Dr. Hutfless stated that appellant "[did] not recall the specific accident that he had" but he had been cutting vinyl and kneeling. On examination, appellant was uncomfortable pushing to full extension and had some medial patellofemoral pain. Dr. Hutfless diagnosed left knee medial meniscus tear.

Appellant submitted an August 12, 2009 disability slip from Dr. Peter M. Cimino, a Board-certified orthopedic surgeon, who diagnosed left knee medial meniscus tear and placed him off work until further notice. On September 11, 2009 Dr. Cimino diagnosed "knee surgery" and stated that appellant could return to work with no restrictions.

By decision dated October 6, 2009, OWCP denied appellant's claim. Although it accepted that the work event occurred as alleged, namely, that appellant was kneeling and cutting wallpaper at work on July 31, 2009, OWCP found that the evidence did not establish that the claimed medical condition was causally related to the established work-related event.

On July 6, 2010 appellant requested reconsideration.

In a September 18, 2009 narrative report, Dr. Hutfless stated that on July 31, 2009 appellant developed acute pain in his left lower extremity while kneeling and cutting vinyl at work, and had undergone surgery for an acute meniscus tear. He stated, "In summary, [appellant] suffered a work-related injury that required him to be off work, undergo surgery and participate in a rehabilitation program." The record also contains August 2, 2009 laboratory test results and August 12, 2009 x-rays of both ankles.

Appellant submitted an August 12, 2009 timeline of his activities leading up to the claimed injury. On July 26, 2009 he suffered minor pain when he injured his ankle and bruised his leg while landscaping the north side of his home, which required moving and setting 40- to 60-pound rocks. Appellant did not miss work due to the injury, which he acknowledged was not work related.

In an August 26, 2009 statement, appellant alleged that Mr. Sietsena limited his statement to conceal the fact that his knee injury occurred five days after his leg injury. The record contains an annotated copy of Mr. Sietsena's statement. Alleging that Mr. Sietsena misrepresented his actions, appellant stated that he did report his leg pain to Mr. Sietsena on Friday and that he knew exactly when he injured his knee, namely July 31, 2009 at 12:45 p.m. He also noted that none of the coworkers who provided statements made reference to a knee injury.

In a November 18, 2009 report, Dr. Cimino reported that appellant was "essentially doing well" following a September 4, 2009 left knee chondroplasty. On examination of the left knee, he found no swelling, smooth movements and very nice patellofemoral tracking. Dr. Cimino stated:

> "I did go over [appellant's] history carefully. [Appellant's] left knee complaint is related to a day at his place of employment and did a lot of kneeling and twisting and turning while kneeling. His type of work is consistent with the findings in his arthroscopy and I do feel that the knee is work related. The ankle problem is unrelated to any work accidents. [Appellant] had some soreness around July 26, 2009, when he was landscaping around his home. I did not find the ankle or that event to have anything to do with his work injury."

In a September 21, 2010 decision, OWCP denied modification of the October 6, 2009 decision on the grounds that the evidence failed to establish a causal relationship between the accepted incident and the diagnosed knee condition.

LEGAL PRECEDENT

FECA provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[3]

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his 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, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] When an employee claims that she sustained a traumatic injury in the performance of duty, he must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[5]

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 employment.[6] An award of compensation may not be based on appellant's belief of causal relationship.[7] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is

[2] 5 U.S.C. § 8102(a).

[3] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[4] *Robert Broome*, 55 ECAB 339 (2004).

[5]. *Tracey P. Spillane*, 54 ECAB 608 (2003). *See also Deborah L. Beatty*, 54 ECAB 340 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term injury as defined by FECA, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101 (5). *See* 20 C.F.R. § 10.5(q)(ee).

[6] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[7] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

sufficient to establish a causal relationship.[8] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under FECA.[9]

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion must be based on a complete factual and medical background of the claimant, 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 established incident or factor of employment.[10]

ANALYSIS

OWCP accepted that the workplace incident occurred, as alleged, namely, that appellant was kneeling and cutting wallpaper at work on July 31, 2009. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy his burden of proof.

On August 3, 2009 Dr. Hutfless reported that appellant experienced pain in the lateral aspect of the left lower extremity just below the knee and diagnosed probable tear of tendon insertion of the left knee. He did not provide a definitive diagnosis or render an opinion as to the cause of appellant's condition.[11] Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[12] Similarly, August 10, 2009 progress notes, lacking any opinion on causal relationship, are of limited probative value.

In an August 12, 2009 report, Dr. Hutfless diagnosed left knee medial meniscus tear. He obtained a history that appellant "[did] not recall the specific accident that he had" but he had been cutting vinyl and kneeling. Appellant's inability to identify a specific incident as the cause of his claimed injury undermines his claim for traumatic injury.[13] Dr. Hutfless did not provide his own opinion on the cause of the diagnosed knee condition. Therefore, his report is of diminished probative value.[14]

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[8] *Id.*

[9] 20 C.F.R. § 10.303(a).

[10] *John W. Montoya*, 54 ECAB 306 (2003).

[11] The Board has held that a diagnosis of pain does not constitute a basis of payment for compensation, as pain is considered to be a symptom rather than a specific diagnosis. *Robert Broom*, *supra* note 4.

[12] *Michael E. Smith*, 50 ECAB 313 (1999).

[13] *See supra* note 5 and accompanying text.

[14] *See Michael E. Smith*, *supra* note 12.

In a September 18, 2009 narrative report, Dr. Hutfless stated that on July 31, 2009 appellant developed acute pain in his left lower extremity while kneeling and cutting vinyl at work, and had undergone surgery for an acute meniscus tear. He opined that appellant had suffered a work-related injury that required him to be off work, undergo surgery and participate in a rehabilitation program. Dr. Hutfless did not, however, provide examination findings or a complete factual and medical history. Most significantly, he did not explain how appellant sustained a meniscal tear as a result of kneeling and cutting vinyl on the date in question, or why lifting heavy rocks the prior week could not have been responsible for the injury. A medical opinion that is not fortified by rationale is of diminished probative value.[15]

In a November 18, 2009 report, Dr. Cimino reported that appellant was doing well following a September 4, 2009 left knee chondroplasty. He opined that appellant's left knee condition was related to a day at his place of employment when he did a lot of kneeling, twisting and turning while kneeling, noting that his type of work was consistent with his arthroscopy. Dr. Cimino's opinion, however, is not supported by an explanation of the medical process through which appellant's meniscal tear resulted from kneeling at work, rather than from lifting heavy rocks at home or any other nonwork-related activity. As noted, medical conclusions unsupported by rationale are of little probative value[16] and are insufficient to establish causal relationship.[17]

Appellant submitted an August 2, 2009 emergency department report, signed by a physician's assistant, stating that he injured his right leg at work while painting. As physicians' assistants do not qualify as "physicians" under FECA, this report does not constitute probative medical evidence.[18] The remaining medical evidence of record including disability slips, x-rays and test results, which do not contain an opinion as to the cause of appellant's diagnosed knee condition, are of limited probative value.

Appellant expressed his belief that his left knee condition resulted from the July 31, 2009 employment incident. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[19] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[20]

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[15] *Cecilia M. Corley*, 56 ECAB 662 (2005).

[16] *Willa M. Frazier*, 55 ECAB 379 (2004).

[17] *See Calvin E. King, Jr*., 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr*., 41 ECAB 843 (1990).

[18] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as "physician" as defined in 5 U.S.C. § 8101(2). Section 8101(2) of FECA 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." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[19] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[20] *Id.*

OWCP advised appellant that it was his responsibility to provide a comprehensive medical report describing his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to OWCP's request. As there is no probative, rationalized medical evidence addressing how his left knee condition was caused or aggravated by his employment, he has not met his burden of proof to establish that he sustained an injury in the performance of duty on July 31, 2009.

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 sustained a traumatic injury in the performance of duty on July 31, 2009.

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 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