United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 12-658**
	)	**Issued: August 2, 2012**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Aurora, CO, 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
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On January 30, 2012 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) January 18, 2012 merit decision. Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 has met his burden of proof to establish that he sustained a traumatic injury to his left knee in the performance of duty on June 14, 2011.

FACTUAL HISTORY

On June 14, 2011 appellant, then a 55-year-old security screener, filed a traumatic injury claim alleging that he sustained an injury to his left knee on that date while performing a "pat

[1] 5 U.S.C. § 8101 *et seq.*

down" on an airline passenger. When he squatted down to examine the passenger's legs, he reportedly felt and heard a pop in his left knee, followed by severe pain.

Appellant submitted a June 16, 2011 report from Dr. Daniel Lumian, Board-certified in family medicine, who diagnosed left knee pain. Dr. Lumian stated that appellant was "doing a 'pat down,' squatting and had knee pain." On examination, appellant had pain with flexion greater than 90 degrees and effusion. Dr. Lumian indicated by placing a checkmark in the "yes" box his belief that appellant's condition was caused or aggravated by employment activities. He recommended light duty for two weeks.

Appellant submitted an August 8, 2011 report from Dr. Steven Traina, a Board-certified orthopedic surgeon, who stated that appellant experienced immediate pain and swelling in his left knee while squatting during a "pat down." Dr. Traina reported that appellant reinjured his left knee at home on July 31, 2011 and again experienced pain and swelling. X-rays revealed significant arthritis in the right knee and some patellofemoral arthrosis in the left knee. Dr. Traina diagnosed "probable medial meniscal tear with ongoing chondromalacia" and recommended that appellant undergo a magnetic resonance imaging (MRI) scan.

The record contains an August 11, 2011 report of a left knee MRI scan. The report reflected a radial tear in the posterior horn of the medial meniscus at the root attachment with slight subluxation, possibly due to increased mobility; chronic severe chondromalacia in the trochlear groove with mild chronic chondromalacia on the patellar articular surface; and small joint effusion and small uncomplicated Baker's cyst.

In an August 15, 2011 report, Dr. Traina diagnosed meniscus tear. He noted that much of appellant's ongoing patellofemoral arthrosis was "old and chronic," but that he could arthroscopically alleviate a lot of medial joint line pain, which occurred from the work injury. On August 16, 2011 Dr. Traina requested authorization to perform left knee surgery.

By letter dated August 31, 2011, OWCP informed appellant that the information submitted was insufficient to establish his claim. It advised him to submit additional factual and medical evidence, including a physician's report with a diagnosis and a rationalized opinion explaining how the diagnosed condition was causally related to the claimed event.

In an October 5, 2011 decision, OWCP denied appellant's claim on the grounds that he had not established fact of injury. The claims examiner found that evidence failed to establish that he sustained a diagnosed condition causally related to the claimed incident.

On October 24, 2011 appellant requested reconsideration. He contended that the medical evidence submitted established that he sustained a left knee injury on June 14, 2011.

The record contains an October 13, 2011 narrative report from the employing establishment medical director, Dr. Marianne Cloeren, a Board-certified internist, who diagnosed medial meniscus tear. Dr. Cloeren noted appellant's claim that he sustained a left knee injury on June 14, 2011 while patting down a passenger. She opined that his claimed reinjury to the left knee, which occurred at home, "probably relate[d] to progression of the tear, which appear[ed] to have started during the work activity." Dr. Cloeren stated that appellant's clinical history

supported a causal relationship between his diagnosed knee condition and the alleged work incident.

By decision dated January 18, 2012, OWCP modified its October 5, 2011 decision to accept that the June 14, 2011 incident occurred as alleged. It denied the claim, however, on the grounds that the medical evidence was insufficient to establish a causal relationship between the accepted incident and the diagnosed meniscal tear.

On appeal, appellant contends that the evidence of record is sufficient to establish his traumatic injury claim.

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 he is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period, 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 he 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

[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] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (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).

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 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 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 appellant was a federal employee, that he timely filed his claim for compensation benefits and that the June 14, 2011 workplace incident occurred as alleged. 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 from a qualified physician 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 June 16, 2011 Dr. Lumian provided examination findings and diagnosed left knee pain. He failed, however, to provide a specific diagnosis. The Board has held that pain is a symptom, rather than a compensable medical diagnosis.[11] Dr. Lumian indicated by placing a checkmark in the "yes" box his belief that appellant's condition was caused or aggravated by employment activities. A mere checkmark or affirmative notation in response to a form question on causal relationship is not sufficient to establish a claim.[12] The Board has held that a report that addresses causal relationship with a checkmark, without a medical rationale explaining how the work conditions caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship.[13] In this case, Dr. Lumian failed to explain how the events of June 14, 2011 were competent to cause appellant's diagnosed condition.

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

[8] *Id.*

[9] 20 C.F.R. § 10.303(a).

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

[11] *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[12] *See Gary J. Watling*, 52 ECAB 278 (2001).

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

On August 8, 2011 Dr. Traina stated that appellant experienced immediate pain and swelling in his left knee while squatting during a "pat down" and reported that appellant reinjured his left knee at home on July 31, 2011. He diagnosed "probable medial meniscal tear with ongoing chondromalacia" and recommended that appellant undergo an MRI scan. Dr. Traina's diagnosis of "probable meniscal tear" is speculative and tentative, in that it was made prior to a review of MRI scan results. Additionally, Dr. Traina did not provide a definitive opinion as to whether appellant's current knee condition was caused by the accepted June 14, 2011 incident, the July 31, 2011 incident or both. Absent a rationalized explanation as to how the June 14, 2011 incident was competent to have caused the left knee injury, his report is of limited probative value.

On August 15, 2011 Dr. Traina diagnosed meniscus tear. He noted that much of appellant's ongoing patellofemoral arthrosis was "old and chronic," but that he could arthroscopically alleviate a lot of medial joint line pain, which occurred from the work injury. Dr. Traina provided a definitive diagnosis. He did not provide a definitive opinion as to whether the meniscal tear was due to the June 14, 2012 incident. Rather, Dr. Traina suggested that it may have developed over a long period of time. His reports are unsupported by rationalized medical evidence explaining the nature of the relationship between appellant's left knee condition and the accepted incident.[14] The mere fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.[15] Therefore, Dr. Traina's reports are of limited probative value and are not sufficient to establish appellant's claim.[16]

In her October 13, 2011 narrative report, Dr. Cloeren diagnosed medial meniscus tear, noting appellant's claim that he sustained a left knee injury on June 14, 2011 while patting down a passenger. She opined that his claimed reinjury to the left knee, which occurred at home, "probably relate[d] to progression of the tear, which appear[ed] to have started during the work activity," and stated that appellant's clinical history supported a causal relationship between his diagnosed knee condition and the alleged work incident. Dr. Cloeren's report lacks probative value on several counts. First, her speculative opinion is not based on an examination of appellant. Moreover it is not supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established June 14, 2011 incident.[17] The Board finds that Dr. Cloeren's report is insufficient to establish appellant's claim.

The record does not contain an opinion by any qualified physician sufficient to establish appellant's claim that his left knee condition was causally related to the June 14, 2011 incident. Appellant expressed his belief that this condition resulted from the accepted 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.[18]

[14] *Leslie C. Moore*, 52 ECAB 132 (2000).

[15] *Id.*

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

[17] *John W. Montoya*, *supra* note 10.

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

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.[19] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by the work-related incident is not determinative.

OWCP advised appellant that it was his responsibility to provide a comprehensive medical report which described 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, appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty causally related to factors of his federal employment.

On appeal, appellant contends that the evidence of record is sufficient to establish her traumatic injury claim. For reasons stated, the Board finds that she has failed to meet her burden of proof in this case.

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 has not met his burden of proof to establish that he sustained a left leg injury in the performance of duty on June 14, 2011.

[19] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board