

**United States Department of Labor
Employees' Compensation Appeals Board**

C.E., Appellant)

and)

U.S. POSTAL SERVICE, PROCESSING &)
DISTRIBUTION CENTER, Syracuse, NY,)
Employer)

**Docket No. 12-138
Issued: May 15, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 19, 2011 appellant filed a timely appeal from a June 27, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 established a recurrence on October 4, 2010 causally related to his July 23, 2010 employment injury.

FACTUAL HISTORY

On July 23, 2010 appellant, then a 56-year-old mail handler, filed an occupational claim (Form CA-2) alleging that he sustained a left knee injury as a result of his federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

On the claim form he indicated that he had a prior 1995 torn meniscus in his right knee. In a brief statement dated July 23, 2010, appellant stated that on that date he bent down to pick up a sack of mail in a wire basket and felt a sharp pain in his left knee. He stated that when he bent down again the pain returned.

In a report dated July 23, 2010, Dr. Ivan Wolf, an occupational medicine specialist, provided a history that two hours earlier appellant was bending over to pick mail out of a cart and felt sharp pain in the inner aspect of the left knee. He diagnosed left knee sprain. In a report dated July 27, 2010, Dr. Wolf stated that appellant reported being “100 percent better,” with no further pain and he was working without difficulty. Although the reverse of the Form CA-2 claim form indicated that appellant had stopped working July 23, 2010, there is no indication he filed a claim for a specific period of disability between July 23 and 27, 2010.

On October 12, 2010 appellant filed a notice of recurrence of disability (Form CA-2a) commencing October 4, 2010. He also submitted a claim for compensation (Form CA-7) commencing October 6, 2010. The record contains time analysis forms (CA-7a) indicating that appellant continued to work as of October 4, 2010, using intermittent hours of leave and stopped working October 12, 2010.

Appellant submitted a note, with an illegible signature, dated October 4, 2010 from a Veterans Affairs Medical Center.² In an attending physician’s report (Form CA-20) dated October 7, 2010, Dr. Dwight Webster, an orthopedic surgeon, provided a history that appellant was pushing a heavy cart while at work in July.³ He indicated that a September 27, 2010 magnetic resonance imaging (MRI) scan reflected a torn medial meniscus in the left knee and he checked a box “yes” as to causal relationship with employment. Dr. Webster stated, “could be aggravated [left] knee symptoms from pushing cart.” According to the report, left knee surgery would be scheduled. Dr. Webster also submitted a duty status report (Form CA-17) indicating that appellant could work with restrictions. In an October 15, 2010 letter, the employing establishment stated that temporary light duty was not available.⁴

By letter dated October 26, 2010, OWCP advised appellant that his claim was accepted for a left knee sprain. It also found the condition of left medial meniscus tear was not an accepted condition.

In a report dated November 22, 2010, Dr. Webster stated that his responses on the CA-20 form should be edited. He indicated that with respect to the history of injury, appellant was bending over to pick up a sack near the bottom of a wire basket. Dr. Webster stated that with respect to causal relationship, “This condition can be caused by lifting sacks and pushing heavy carts.”

² The signature appears to be from a physician’s assistant.

³ The record also contains an October 7, 2010 report from a physician’s assistant.

⁴ The time analysis forms indicated that appellant worked approximately eight hours on October 8, 2010 and five hours on October 9, 2010.

By decision dated December 10, 2010, OWCP denied the claim for compensation commencing October 4, 2010. It found the medical evidence was insufficient to establish the claim.

Appellant requested a hearing before an OWCP hearing representative, which was held on April 12, 2011. He submitted evidence which indicated that he underwent left knee surgery on January 5, 2011. In a report dated April 20, 2011, Dr. Webster stated that Veterans Affairs medical records noted that appellant had complained of left knee pain on May 27, 2010, with no specific injury reported. He indicated that he first treated appellant on October 7, 2010 and reported appellant underwent arthroscopy and meniscectomy on January 5, 2011. Dr. Webster concluded, "I think the evidence in the VA medical records indicates that the work injury in July 2011, more likely than not, caused the symptoms from the torn meniscus in [appellant's] left knee. The torn meniscus was responsible for his subsequent symptoms and was verified at the time of arthroscopy." Appellant also submitted reports from a physician's assistant and a physical therapy note.

By decision dated June 27, 2011, OWCP's hearing representative affirmed the December 10, 2010 decision. The hearing representative found the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁵ A recurrence of disability means "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."⁶

Causal relationship between a particular condition or disability and the employment injury is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁷ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition or disability and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be

⁵ *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

⁶ 20 C.F.R. § 10.5(x).

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

supported by medical rationale.⁸ Neither the fact that a disease or condition manifests itself during a period of employment nor the claimant's belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹

ANALYSIS

In the present case, appellant filed a Form CA-2 claim, which is intended for claims of injury produced by work factors occurring over more than one workday or shift.¹⁰ His statements regarding the claim, however, discussed one incident occurring on July 23, 2010 when he bent over to pick up a sack of mail and felt a sharp pain in his left knee. It would appear therefore that appellant's claim was for a traumatic injury on July 23, 2010. OWCP accepted the claim for a left knee sprain. The claim form indicated that appellant had stopped working as of July 23, 2010 and Dr. Wolf's report of that date provided work restrictions. The specific period of disability is not clear, but Dr. Wolf indicated that as of July 27, 2010 appellant was released to full duty. He filed a recurrence of disability claim for intermittent hours commencing October 4, 2010, stopped working as of October 12, 2010 and underwent left knee surgery on January 5, 2011.

The issue is whether appellant has submitted sufficient medical evidence to establish an employment-related disability on or after October 4, 2010. In assessing the medical evidence, the Board notes that any report from a physician's assistant or physical therapist is not considered probative medical evidence as it was not prepared by a physician under FECA.¹¹

Appellant was treated by Dr. Webster on October 7, 2010 and he diagnosed a torn medial meniscus, based on a September 27, 2010 MRI scan. As to causal relationship between a diagnosed condition (and any accompanying disability) and the employment injury, Dr. Webster did not provide a rationalized medical opinion. He initially stated in an October 7, 2010 Form CA-20 that the condition "could be aggravated" by the employment incident. The checking of a box "yes" and this equivocal statement are of little probative value on the issue of causal relationship.¹²

In a brief November 22, 2010 report, Dr. Webster stated that "this condition" can be caused by lifting sacks and pushing carts. Presumably he was referring to the underlying diagnosed condition of the torn medial meniscus. It is not clear whether the reference to pushing carts was related to the July 23, 2010 incident or to the general performance of such duties. Appellant did not, as noted above, provide any factual discussion of pushing carts with respect to this claim.

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁰ 20 C.F.R. § 10.5(q).

¹¹ *George H. Clark*, 56 ECAB 162 (2004); *see also Barbara J. Williams*, 40 ECAB 649 (1989) (physical therapists are not physicians under FECA); 5 U.S.C. § 8101(2).

¹² *See Barbara J. Williams*, *supra* note 11.

In an April 20, 2011 report, Dr. Webster stated it was more likely than not that the work injury caused the symptoms from the torn meniscus. It is not entirely clear whether he felt that there was an aggravation of symptoms from the work injury or that the work injury caused the torn meniscus. As noted above, there must be rationalized medical opinion evidence that clearly explains the medical opinion. Dr. Webster refers to the VA medical records, without explaining what specific records supported his opinion. The reference to treatment on May 27, 2010 for left knee pain highlights the need for further explanation as to how the accepted employment injury contributed to the diagnosed torn meniscus. Moreover, Dr. Webster did not acknowledge that appellant was treated on July 27, 2010 and Dr. Wolf reported the knee to be “100 percent better” in his report that date, stating that appellant was working without difficulty and without pain.

The record does not contain medical evidence with a rationalized medical opinion on causal relationship between a diagnosed torn medial meniscus or aggravation of a torn medial meniscus and the employment injury. There is no rationalized opinion with respect to specific periods of employment-related disability on or after October 4, 2010 or an opinion regarding the January 5, 2011 surgery and the employment injury. It is appellant’s burden of proof, and the Board finds that appellant did not meet his burden in this case.

On appeal, appellant submitted a letter from appellant’s congressional representative regarding the claim, but the specific issues presented in the case are the medical issues discussed above. He has the burden to submit probative medical evidence addressing the relevant issues in his claim for compensation. For the reasons noted, appellant did not meet his burden of proof. He may submit new evidence or argument with a written application 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 did not meet his burden of proof to establish a recurrence of disability on or after October 4, 2010.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 27, 2011 is affirmed.

Issued: May 15, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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