

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

N.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE)
South Amboy, NJ, Employer)

Docket No. 12-900
Issued: November 15, 2012

Appearances:

Robert D. Campbell, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 12, 2012 appellant, through his attorney, filed an appeal from a September 12, 2011 merit decision of the Office of Workers' Compensation Programs denying his claim for compensation. 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 met his burden of proof to establish that he was injured in the performance of duty on June 15, 2009, as alleged.

On appeal appellant, through counsel, contends that the June 15, 2009 employment incident resulted in an aggravation of right knee arthropathy and osteoarthritis; recurrent tear of medial meniscus of the right knee and permanent impairment of the right lower extremity. He contends that OWCP erred in evaluating the medical evidence.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 24, 2009 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim alleging that, on June 15, 2009, while stepping out of his truck to deliver a parcel, his right knee locked and he felt a sharp pain. He filed a claim noting that a magnetic resonance imaging (MRI) scan evinced a new flap tear on the junction of the posterior horn and body. Appellant submitted a June 16, 2009 note by Dr. Roger Lallemand, Jr., a Board-certified anesthesiologist, who requested that appellant be excused from work for four weeks and have an MRI scan. The employing establishment controverted the claim.

A June 17, 2009 imaging of both of appellant's knees by Dr. Mary Ann Peterson, a Board-certified radiologist, diagnosed degenerative joint disease worse on left, with slight internal progression. She noted intra-articular loose bodies on the left knee. An imaging of June 18, 2009 was interpreted by Dr. Peterson as showing an abnormal medial meniscus suspicious for a new flap tear at the junction of the posterior horn and body and oblique tear of the posterior horn and radial tear of the anterior horn and described superimposed on postoperative truncation. She noted severe degenerative changes of the medial femoral compartment and thickening of the infrapatellar tendon unchanged.

In a July 29, 2009 medical report, Dr. Lallemand stated that appellant had been under his care since June 7, 2007. He was presently treating appellant for a right knee injury sustained while trying to catch himself from falling on June 15, 2009. Dr. Lallemand noted that appellant was diagnosed with knee enthesopathy, arthritis osteoarthritis (degenerative wear and tear) knee, knee pain and knee osteoarthritis. The MRI scan of June 17, 2009 showed severe degenerative changes in the medial more than lateral femoral compartments with severe chondromalacia, osteophyte formation, subchondral cysts, bone edema and cortical loss which is not significantly changed from the previous study. The medial meniscus was abnormal with an oblique tear in the posterior horn extending to the interior surface and a flap tear through the junction of the posterior horn and body from the superior to inferior surfaces, which had not been seen previously. Dr. Lallemand also noted that a truncation of the body and anterior horn, which might be postoperative or an additional tear. He further noted that there was a vertical tear through the function of the anterior horn and body consistent with a small radial tear. Dr. Lallemand noted diffuse thickening of the intrapatellar tendon, which was unchanged and possibly due to prior chronic tears and or repair. He noted that appellant was out of work for 8 to 12 weeks and was going to need further tests before the recommended knee replacement surgery can be performed.

By decision dated August 13, 2009, OWCP denied appellant's claim. It determined that the factual basis of his claim was unclear or unknown. OWCP also determined that the medical evidence received was insufficient to establish that appellant sustained an injury in connection with the reported incident.

Appellant retained an attorney and on August 10, 2010, he requested reconsideration. In support of the claim, counsel submitted medical evidence that supported medical conditions that developed prior to appellant's alleged incident of June 15, 2009. He submitted a copy of an operative report indicating that on May 2, 1988 appellant had an arthroscopy on his right knee and right partial medial meniscectomy. Counsel also submitted a July 27, 1989 operative report indicating that on that date appellant underwent an arthroscopy, arthroscopic partial medial

meniscectomy and arthroplasty. On August 10, 2004 appellant underwent arthroscopic partial medial meniscectomy and chondroplasty of the right knee with synovectomy. Counsel also submitted a copy of an imaging taken by Dr. Peterson of appellant's right knee on November 26, 2007 which showed severe degenerative osteoarthritis especially of the medial femoral compartment and abnormal medial meniscus which may represent a postoperative change or tear especially of the body and posterior horn. An imaging of appellant's knees on January 8, 2008 was interpreted as showing loose osteochondral bodies and degenerative disease. Counsel also submitted a copy of a schedule award decision for a 75 percent impairment to appellant's right lower extremity dated June 5, 1992 in OWCP File No. xxxxxx846. The date of injury was listed as November 16, 1987. Dr. Peterson also submitted new medical evidence concerning the time period after the incident. In a June 23, 2009 report, Dr. Mark A. Hartzband, a Board-certified orthopedic surgeon, noted that x-rays were taken which confirmed advanced osteoarthritis right knee with bone-on-bone medially and anteriorly and a tibial femoral subluxation. He noted that appellant had a long history of right knee problems dating back to a patella tendon rupture and repair in 1980 and had three subsequent scopes in 1989, 1990 and 2004. Dr. Hartzband noted that appellant's work as a postal worker has not helped him. On August 7, 2009 he performed a right cemented total knee arthroplasty.

In a statement dated August 9, 2010, appellant indicated that he first injured his right knee in a work-related accident while working for the employing establishment on November 16, 1987, and that his right knee medical problems were aggravated by the work incident of June 15, 2009. He discussed the June 15, 2009 incident, his surgeries and other medical treatment.

By decision dated November 15, 2010, OWCP modified the August 13, 2009 decision as it found that appellant established that the incident occurred as alleged, but denied his claim as he had not met the requirements for establishing that his condition was caused by the incident of June 15, 2009.

Appellant's attorney sent him to Dr. Arthur Becan, an orthopedic surgeon, for another opinion. Dr. Becan examined appellant, reviewed his work history including the history of the work incident and reviewed his medical records. He diagnosed appellant with cumulative and repetitive occupational trauma and aggravation of preexistent right knee pathology (status post arthroscopy and partial medial meniscectomy 1988, status post arthroscopy and partial medial meniscectomy 1989 and status post arthroscopy and partial medial meniscectomy and chondroplasty 2004); recurrent tear of the medial meniscus of the right knee; progressive arthropathy of the right knee; status post right total knee replacement performed on August 7, 2009. Dr. Becan opined that the cumulative and repetitive occupational trauma sustained during appellant's course of his employment with the employing establishment to his right knee necessitating multiple arthroscopic surgical procedures to the right knee in 1988, 1989 and 2004 and compounded by a defined work-related injury sustained on June 15, 2009 are competent producing factors for appellant's subjective and objective findings. Under reasons for his opinions, he listed: history according to appellant; physical examination; duties of appellant's occupation and review of medical records. Dr. Becan believed that appellant reached maximum medical improvement on March 14, 2011.

By decision dated September 12, 2011, OWCP denied modification of the November 15, 2010 decision. It stated that the report of Dr. Becan was based on an inaccurate history of injury as he referenced an employment injury of 1987 and there is no record of an employment-related knee injury in 1987. OWCP further noted that Dr. Becan did not discuss the 1980 sports injury and its effects on appellant's condition.

LEGAL PRECEDENT

OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.² An employee seeking benefits under FECA³ 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, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. The employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden of proof where there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁵

The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition 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

² 20 C.F.R. § 10.5(e).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

⁵ *Id.*

reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

ANALYSIS

OWCP accepted that the employment incident of June 15, 2009 occurred as alleged by appellant whose claim was denied as OWCP determined that the medical evidence was not sufficient to establish that an injury was sustained causally related to this incident. The Board finds that appellant did not establish that he sustained an injury causally related to the accepted employment incident of June 15, 2009.

Appellant has a history of problems with his right knee. The medical evidence establishes that he had multiple surgeries on his knee between 1980 and 2004. In a November 26, 2007 imaging, Dr. Peterson noted that appellant had severe degenerative osteoarthritis. There was also evidence that a prior claim was accepted in OWCP File No. xxxxxx846, resulting in a schedule award for a 75 percent impairment of appellant's right leg for an injury sustained on November 16, 1987.

After the June 15, 2009 employment incident, appellant submitted medical reports in support of his claim. The medical reports do not provide a rationalized opinion explaining how appellant sustained a new injury or an aggravation of an old injury on June 15, 2009. The imaging reports by Dr. Peterson do not address causation. Dr. Lallemand noted the work incident and discussed appellant's medical history, but failed to relate appellant's medical condition to the employment incident of June 15, 2009. Dr. Harzband noted appellant's history of right knee problems and stated that his employment "has not helped him." He did not specifically relate appellant's medical condition to the June 15, 2009 employment incident.

Dr. Becan's report is not sufficient to establish causal relationship because he does not provide a fully rationalized explanation of how the June 15, 2009 employment incident caused appellant's injuries; rather he stated a general conclusion that appellant's prior work injury and the June 15, 2009 employment incident were competent producing factors for appellant's subjective and objective findings. To meet his burden of proof, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.⁷ Dr. Becan's general statement does not amount to a rationalized explanation of a causal relationship. Accordingly, appellant has not submitted medical evidence sufficient to establish that the accepted employment incident of June 15, 2009 caused any further injury to his right knee and therefore he has not met his burden of proof to establish an injury sustained in the performance of duty.

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.

⁶ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

⁷ *J.C.*, Docket No. 11-1513 (issued April 16, 2012).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he was injured in the performance of duty on June 15, 2009, as alleged.

ORDER

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

Issued: November 15, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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