United States Department of Labor
Employees' Compensation Appeals Board

A.G., Appellant	)	
and	)	**Docket No. 13-860**
	)	**Issued: August 22, 2013**
U.S. POSTAL SERVICE, MADISON SQUARE POST OFFICE, New York, NY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 27, 2013 appellant, through his attorney, filed a timely appeal of the January 7, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 established that he sustained an employment-related injury to his right knee on March 15, 2011, as alleged.

On appeal, appellant's attorney contends that OWCP's decision is contrary to fact and law.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 4, 2011 appellant, then a 29-year-old letter carrier, filed an occupational disease claim wherein he alleged that on March 15, 2011, while performing his federal duties, he felt a pop inside his right knee and that every time he took a step he felt discomfort. The employing establishment controverted his claim.

By decision dated January 17, 2012, OWCP denied appellant's claim for failure to establish that the event occurred as alleged.

On January 24, 2012 appellant, through his attorney, requested a telephone hearing.

In further support of his claim, appellant submitted emergency room records from Forest Hills Hospital indicating that he was seen on March 16, 2011 complaining of right knee pain and slight swelling. He was diagnosed with right knee sprain. The report was signed by Dr. Stacy Kesten, a physician Board-certified in emergency medicine. The majority of the notations on this report are illegible.

Appellant also submitted chart notes from Queens' Health Network. In an August 19, 2011 report, Dr. Stuart G. Kessler, a physician Board-certified in emergency medicine, noted that appellant had pain in the right knee joint. In a September 7, 2011 note, Dr. Jose Arandia noted abnormal right knee crepitation with preserved range of motion and no local swelling. In a November 23, 2011 report, he noted pain in joint, lower leg. In a December 7, 2011 report, a Dr. Yangguan Wu noted that appellant's right knee pain and swelling which made it difficult for him to walk and that he had right knee swelling after walking. He diagnosed pain in the joint, lower leg.[2]

The record also contains notes from physicians at the City Hospital Center at Elmhurst. In a September 7, 2011 note, Dr. David Weeks, a Board-certified radiologist, interpreted an x-ray of appellant's right knee and determined that no fracture was demonstrated and there was normal joint alignment. Dr. Martin J. Fine, a Board-certified radiologist, interpreted a December 23, 2011 lower extremity magnetic resonance imaging (MRI) scan as showing a tiny focal tear posterior torn medial meniscus reaching the inferior articular margin.

Dr. Charles Demarco, a Board-certified orthopedic surgeon, saw appellant on several occasions. He noted in a January 24, 2012 report that appellant was a mail carrier who on March 15, 2011, while walking and delivering mail, sustained a twisting injury and felt a pop in his right knee, and that since that time he has had pain and dysfunction in the right knee, located over the anterior and anteromedial aspects of the right knee. Dr. Demarco noted that appellant had an MRI scan that showed a small meniscal tear. He further noted significant pain and dysfunction in the right knee and recommended authorization for surgical intervention, noting that appellant failed conservative management. In a February 28, 2012 report, Dr. Demarco noted that appellant's MRI scan of the right knee showed a torn meniscus and that the only option was surgical intervention. In an April 3, 2012 report, he diagnosed a torn meniscus right

[2] The Board was unable to confirm the qualifications of Drs. Arandia and Wu.

knee. Dr. Demarco again requested authorization for surgical intervention of the right knee with arthroscopy, meniscectomy and debridement.

At the hearing held on April 17, 2012 appellant testified before an OWCP hearing representative that, prior to the alleged injury, he never complained to any supervisor about pain in his knee. He further testified with regard to his medical treatment.

In an April 19, 2012 report from University Orthopedics of New York, a box was checked indicating that appellant was under their care and was totally disabled and could not return to work until further notice. The report indicated that this was due to an injury to appellant's right knee that he sustained in an employment-related accident on March 15, 2011. This document is not signed; in the place for a signature there is a stamp for University Orthopedics.

In a June 1, 2012 report, Dr. Faina Kogan, a Board-certified internist, indicated that appellant had been under her care since April 27, 2012. She noted that he has right knee partial meniscal tear and right knee pain. Dr. Kogan further stated that appellant can start light duty on June 5, 2012 and should continue with physical therapy and evaluate for return to work full time.

On July 2, 2012 an OWCP hearing representative found that, although appellant's claim was filed for an occupational disease, he actually was claiming a traumatic injury on March 15, 2011. She found that he established that the employment incident occurred as alleged. However, the hearing representative denied appellant's claim as it found that the medical evidence did not establish a diagnosed condition causally related to the accepted incident.

On October 4, 2012 appellant requested reconsideration. In support thereof, he submitted new medical evidence. In a January 17, 2012 report, Dr. Harold James, an internist, diagnosed post-traumatic injury to the right knee. He noted that appellant gave a history of feeling a pop in his right knee while walking his route on March 15, 2011 and that later that night his knee was painful and swollen. Dr. James stated that, if the accident and history reported by appellant were accurate, then a causal relationship of the initial complaints and examination findings exist to the accident of March 15, 2011.

In a July 27, 2012 report, Dr. Michael Alleyne, a physician with Board-certifications in internal medicine, hematology and medical oncology, noted that appellant was walking his preassigned route with his mail push cart when he suddenly felt a popping sound in his right knee. He noted that appellant went to the hospital the next day, and an x-ray of the right knee failed to reveal a fracture. Dr. Alleyne noted that appellant was then seen by an orthopedist, Dr. Wu, who ordered an MRI scan of the right knee, that the MRI scan showed a tiny focal tear of the posterior horn of the medial meniscus reaching the inferior articular margin. He noted that appellant's physical therapy helped and that he needed to continue for another three months. In an August 4, 2012 report on a form, Dr. Alleyne noted that appellant was injured at work on March 15, 2011 while walking with his push cart on duty and heard a popping sound in his right knee. He diagnosed derangement of the knee.

By decision dated January 7, 2013, OWCP denied modification of its prior decisions.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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.[3]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.[4] In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place and in the manner alleged.[5]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[6] 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 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.[7]

ANALYSIS

The Board finds that appellant has not established that he sustained a diagnosed condition causally related to the accepted employment incident of March 15, 2011. Appellant received treatment from Dr. Kesten for a right knee sprain on March 16, 2011. The notes from the emergency department are largely illegible, and therefore are not helpful in determining whether this sprain was related to the employment incident. These are the only medical notes

[3] *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

[4] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[5] *Linda S. Jackson*, 49 ECAB 486 (1998).

[6] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

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

contemporaneous with the March 15, 2011 employment incident. The notes from the physicians at Queens' Health Network, Drs. Kessler, Arandia and Wu, basically discuss right knee pain and swelling; but they do not address the causal relationship aspect.

The diagnostic studies conducted at City Hospital Center at Elmhurst are not sufficient to establish appellant's claim. Dr. Weeks interpreted appellant's x-ray of September 7, 2011 as evincing no fracture and normal joint alignment. Dr. Fine interpreted an MRI scan of December 21, 2011 as showing a tiny tear in the medial meniscus, but made no statement with regard to causation. Dr. Demarco did discuss appellant's work incident and noted that he sustained a twisting injury and felt a pop in his right knee while delivering mail on March 15, 2011. He recommended surgical intervention. Dr. Demarco's opinion with regard to causation is not well rationalized and appears to be based solely on appellant's description of the incident. In fact, he noted a twisting injury that appellant did not describe in his account of his injury. Accordingly, Dr. Demarco's opinion is not sufficient to establish causal relationship. The April 19, 2012 report from University Orthopedics of New York is not signed by a physician and is accordingly entitled to no weight.[8]

Dr. Kogan did not address causal relationship.

Dr. James did state that appellant's post-traumatic injury of the right knee was related to the March 15, 2011 incident. However, he examined appellant on January 17, 2012. Dr. James' report is not sufficiently rationalized to explain why appellant's current injury to his right knee was related to the incident that occurred 10 months earlier. Dr. Alleyne did not examine appellant until 16 months after the March 15, 2011 employment incident. Although he did relate appellant's tear in the right medial meniscus to his employment, Dr. Alleyne also appears to base his conclusion largely on appellant's statements. He does not explain his conclusion, which is particularly important due to the lapse in time.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was caused by his employment is sufficient to establish causal relationship.[9] As appellant did not submit a rationalized medical opinion establishing a causal relationship between his accepted employment incident and a diagnosed medical condition claimed he did not meet his burden of proof.

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.

[8] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2). *See B.K.*, Docket No. 13-481 (issued May 20, 2013).

[9] *Walter D. Morehead*, 31 ECAB 188 (1986).

CONCLUSION

The Board finds that appellant has not established that he sustained an employment-related injury to his right knee on March 15, 2011, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 7, 2013 is affirmed.

Issued: August 22, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board