

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

E.G., Appellant

and

**GOVERNMENT PRINTING OFFICE,
Washington, DC, Employer**

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**Docket No. 12-1603
Issued: February 12, 2013**

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 July 23, 2012 appellant filed a timely appeal from a March 30, 2012 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 claim.

ISSUE

The issue is whether appellant sustained a left knee condition in the performance of duty.

FACTUAL HISTORY

On March 23, 2011 appellant, then a 61-year-old head web pressperson, filed a claim for recurrence of a May 4, 1993 work injury developed under case number xxxxxx570. He stated that on January 3, 2011 he had to prepare the set on a press and clean all the chrome rollers which had hardened ink on them. The work required that he bend, stoop and kneel down. Appellant had to stop several times because of pain in his left knee. On June 9, 2011 he stated that, for the past two weeks, he had been working on the Group 86 presses. On June 6, 2011

¹ 5 U.S.C. § 8101 *et seq.*

appellant worked on the web press 3476 and again experienced pain in his left knee and had to stop work for a few minutes to recuperate.

In a September 28, 2011 letter, OWCP advised appellant that, based on his description, the claim for recurrence was being considered a new occupational disease claim.

By letter dated October 4, 2011, OWCP advised appellant that it required additional factual and medical evidence in support of his claim. It requested a comprehensive medical report from a physician. Appellant was given 30 days to submit the requested information in support of his claim. No evidence was received.

By decision dated November 8, 2011, OWCP denied appellant's claim. It found that he did not submit medical evidence providing a medical diagnosis in connection with his work activities.

On November 16, 2011 appellant requested a review of the written record before an OWCP hearing representative. In a November 16, 2011 report, Dr. Rida N. Azer, a Board-certified orthopedic surgeon, noted that appellant underwent arthroscopic surgery in 1993 with progressive pain in the left knee. He described the left knee examination and x-ray findings and diagnosed developing traumatic arthritis in the left knee. Dr. Azer signed a November 16, 2011 attending physician's report in which appellant stated that "this is a recurrence of the injury of my left knee." In a November 29, 2011 report, he stated that, based on his review of the medical records, appellant developed traumatic arthritis in the left knee as a result of his original work injury of June 4, 1993. Appellant's condition was traumatic in origin and that a total left knee replacement would be needed if he did not improve. He permanently restricted appellant from performing activities that involved unprotected heights, bending, stopping, kneeling, squatting, running, jumping and hazardous situations.

By decision dated March 30, 2012, an OWCP hearing representative affirmed the denial of appellant's claim. The hearing representative instructed OWCP to associate the medical documentation from the claim with the June 4, 1993 claim number xxxxxx570.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing that 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.² 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

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence.⁴

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.⁵

ANALYSIS

The Board finds that appellant failed to submit sufficient medical evidence to establish his left knee condition was causally related to factors of his federal employment. Appellant did not discharge his burden of proof to establish his claim.

Appellant submitted reports from Dr. Azer, who related findings on examination and an x-ray of appellant's left knee. He diagnosed traumatic arthritis of the left knee. Dr. Azer noted that he previously performed arthroscopic surgery in 1993, describing appellant's pain in the left knee as progressive. In a November 29, 2011 report, he reviewed his medical records and stated that appellant's traumatic arthritis in the left knee was a result of his original work injury of June 4, 1993. Dr. Azer did not opine that appellant's left knee traumatic arthritis arose from his work activities described in the current claim. His opinion is of limited probative value.

There is no probative, rationalized medical opinion, based upon an accurate employment history, that the diagnosed condition was causally related to employment factors in the current claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment, nor the belief that his conditions were caused, precipitated or aggravated by his employment, is sufficient to establish causal relationship.⁶ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

OWCP advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Consequently, appellant has not met his burden of proof in establishing that his left knee condition was causally related to his employment in the current claim.

⁴ *Id.*

⁵ *I.J.*, 59 ECAB 408 (2008); *Woodhams*, *supra* note 3.

⁶ *Id.*

On appeal, appellant contends that his left knee condition is causally related to his employment. As noted, he has not met his burden of proof in establishing that his left knee condition was causally related to his employment in the current claim. It is noted that the medical evidence appears to relate appellant's condition to the June 4, 1993 claim number xxxxxx570. The hearing representative instructed OWCP to associate the medical documentation submitted in this claim with the June 4, 1993 claim number xxxxxx570 for full consideration.⁷ Appellant submitted new evidence on appeal, but the Board lacks jurisdiction to review such evidence for the first time on appeal.⁸

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 failed to meet his burden of proof in establishing that his left knee condition was sustained in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 12, 2013
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

⁷ Claim number xxxxxx570 is not before the Board on the present appeal.

⁸ See 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).