

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

T.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Albany, NY, Employer**

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**Docket No. 12-1820
Issued: February 21, 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
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 4, 2012 appellant filed a timely appeal from the March 16, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his injury claim. 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. The Board also has jurisdiction to review OWCP's June 12, 2012 nonmerit decision denying reconsideration.

ISSUES

The issues are: (1) whether descending stairs on January 19, 2012 caused appellant's right iliotibial band syndrome; and (2) whether OWCP properly denied appellant's reconsideration request.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 23, 2012 appellant, a 29-year-old city letter carrier, filed a traumatic injury claim alleging that his right iliotibial band syndrome, or runner's knee, was a result of descending stairs on January 19, 2012. He noticed a sharp pain in the side of his knee, which continued and worsened as the day progressed.

Dr. Eric R. Aronowitz, a Board-certified orthopedic surgeon, saw appellant on January 25, 2012. He related appellant's history of injury and complaints. Dr. Aronowitz described his findings on physical examination and read plain radiographs. He diagnosed right knee iliotibial band syndrome and stated: "[Appellant's] injury occurred when he was performing usual work activities. Subjective symptoms and objective findings are consistent with his exam. [Appellant] has mild to moderate impairment at this time."

In a form report that same date, Dr. Aronowitz indicated with an affirmative mark that appellant's diagnosis was caused or aggravated by employment activity, namely, walking. He returned appellant to work with restrictions on January 31, 2012.

In a March 16, 2012 decision, OWCP denied appellant's claim. It accepted that the work incident occurred as alleged but found that the medical evidence was not sufficient to establish that the diagnosed right knee condition was causally related to the accepted work incident. OWCP found that Dr. Aronowitz diagnosed right knee iliotibial band syndrome but failed to clearly address whether the work incident caused or contributed to the medical condition: "Your physician must explain how the work event(s) caused or affected your condition, based upon an accurate factual and medical history, citing objective findings in support of the opinion."

On April 19, 2012 OWCP received appellant's reconsideration request. Appellant indicated that he was submitting additional relevant evidence needed to approve his claim. He asked OWCP to reconsider his case on the grounds that the additional evidence from Dr. Aronowitz clearly stated that his knee injury was causally related to repetitive motion while walking stairs on a mail route.

On June 12, 2012 OWCP notified appellant that it had denied his reconsideration request without reviewing the merits of his case. The notice stated that a decision was enclosed explaining the basis for the determination.

On appeal, appellant argues that when he appealed this case not all of his documentation was reviewed because he had two cases open for the same injury.

LEGAL PRECEDENT -- ISSUE 1

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her duty.² An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event,

² 5 U.S.C. § 8102(a).

incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.³

Causal relationship is a medical issue,⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty,⁶ 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.⁷

ANALYSIS -- ISSUE 1

Appellant attributed his iliotibial band syndrome to descending stairs on January 19, 2012 while in the course of his employment. He noticed a sharp pain in the side of his knee, which continued and worsened as the day progressed. OWCP accepted that the incident occurred as alleged. The question for determination is whether the January 19, 2012 incident caused his iliotibial band syndrome.

Dr. Aronowitz, the attending orthopedic surgeon, generally supported appellant's claim. He stated that appellant's injury occurred when he was performing usual work activities. With an affirmative mark, Dr. Aronowitz indicated that appellant's diagnosed condition was caused or aggravated by walking at work. The Board has held that, when a physician's opinion on causal relationship consists only of checking "yes" to a form question, the opinion has little probative value and is insufficient to establish causal relationship.⁸ Appellant's burden includes the necessity of furnishing an opinion from a physician who supports his conclusion with sound medical reasoning.

Dr. Aronowitz did not mention that appellant felt a sharp pain in the side of his knee while descending stairs on January 19, 2012. He did not explain what physically happened to appellant's knee when he descended the stairs or why the pain continued and worsened as the day progressed. Dr. Aronowitz did not discuss the nature of iliotibial band syndrome or explain how the January 19, 2012 caused or contributed to the diagnosed condition.

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ *E.g., Lillian M. Jones*, 34 ECAB 379 (1982).

Medical conclusions unsupported by rationale are of little probative value.⁹ Medical conclusions based on incomplete histories are also of diminished probative value.¹⁰ Because Dr. Aronowitz did not soundly explain how descending stairs on January 19, 2012 caused appellant's iliotibial band syndrome, the Board finds that his opinion on causal relationship, is insufficient to establish entitlement to compensation benefits. Accordingly, the Board will affirm OWCP's March 16, 2012 decision denying appellant's claim.

Appellant explains on appeal that he had two cases open for the same injury, so not all of his documentation was reviewed. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision.¹¹ The Board is unable to review evidence that appears in another case record or evidence that might have been associated with the current record after OWCP issued its final decision. Evidence that was not before OWCP at the time of its final decision will not be considered by the Board for the first time on appeal.

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.

LEGAL PRECEDENT -- ISSUE 2

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.¹² An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by OWCP in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹³

A request for reconsideration must be received by OWCP within one year of the date of OWCP decision for which review is sought.¹⁴ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these

⁹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

¹⁰ *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

¹¹ 20 C.F.R. § 501.2(c)(1).

¹² 5 U.S.C. § 8128(a).

¹³ 20 C.F.R. § 10.606.

¹⁴ *Id.* at § 10.607(a).

standards, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.¹⁵

An OWCP decision shall contain findings of fact and a statement of reasons.¹⁶

ANALYSIS -- ISSUE 2

OWCP received appellant's reconsideration request on April 19, 2012, about one month after OWCP denied his traumatic injury claim. His request was therefore timely. The question for determination is whether this request met at least one of the three standards for obtaining a merit review of his case.

Appellant indicated that he was submitting additional relevant evidence. He specifically referred to evidence from Dr. Aronowitz clearly stating that the knee injury was causally related to repetitive motion while walking stairs on a mail route.

OWCP denied this request, but the enclosure explaining the basis for the determination does not appear in the record. The Board is therefore unable to review whether the OWCP properly denied appellant's request. As OWCP's decision of record does not contain findings of fact and a statement of reasons, the Board will set aside the decision and remand the case for a proper decision on appellant's reconsideration request.

CONCLUSION

The Board finds that appellant has not met his burden to establish that descending stairs on January 19, 2012 caused his right iliotibial band syndrome. The medical opinion evidence is insufficient to establish the critical element of causal relationship. The Board also finds that this case is not in posture for decision on whether OWCP properly denied appellant's reconsideration request. The record contains no findings of fact and a statement of reasons.

¹⁵ *Id.* at § 10.608.

¹⁶ *Id.* at § 10.126.

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2012 decision of the Office of Workers' Compensation Programs is affirmed. OWCP's June 12, 2012 decision is set aside and the case remanded for further action.

Issued: February 21, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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