

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

M.M., Appellant)	
)	
and)	Docket No. 13-439
)	Issued: May 2, 2013
U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, Employer)	
)	

Appearances:

Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 18, 2012 appellant, through his attorney, filed a timely appeal from a September 24, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a knee injury while in the performance of duty on January 17, 2012.

FACTUAL HISTORY

On January 18, 2012 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim, alleging that he sustained a knee injury on January 17, 2012 as a result of his federal

¹ 5 U.S.C. § 8101 *et seq.*

employment. He stated that he was descending slippery stairs when he slipped and twisted his right knee. Appellant's supervisor noted on the claim form that appellant was injured in the performance of duty and that the facts alleged by appellant were consistent with his knowledge of the injury.

In support of his claim, appellant submitted a January 27, 2012 report from Dr. Munir Ahmed, a Board-certified orthopedic surgeon, who noted that appellant gave a history that one week ago he had slipped on stairs, tried to hold onto something, had a sudden twisting motion, landing on his right knee. Dr. Ahmed stated that x-rays of appellant's right knee showed some narrowing of the medial joint of the right knee, and he noted tenderness and 1+ joint effusion in appellant's right knee. He opined that appellant's symptoms strongly suggested a torn medial meniscus, he therefore recommended a magnetic resonance imaging (MRI) scan evaluation of appellant's right knee.

On March 2, 2012 OWCP requested that appellant submit further evidence in support of his claim, including a rationalized medical report explaining how a diagnosed medical condition was causally related to the alleged employment event.

OWCP thereafter received a January 18, 2012 x-ray report from Dr. Kevin Willis, a Board-certified diagnostic radiologist, who noted that the x-ray of appellant's right knee revealed three ossified loose bodies projecting within the joint space, narrowing of the medial compartment and no significant suprapatellar joint effusion.

In a March 12, 2012 report, Dr. Ahmed reiterated appellant's history of injury. He stated that the injury occurred as appellant slipped on the step and tried to stabilize himself and had a sudden twisting motion of his knee. Dr. Ahmed reviewed x-rays of appellant's right knee and noted small joint effusion which was 1+. He diagnosed torn medial meniscus of the right knee secondary to traumatic injury and joint effusion. Dr. Ahmed recommended an MRI scan evaluation of the right knee, as conservative management had failed.

On March 22, 2012 OWCP received medical records from the Community Medical Center. These records document that appellant was seen on January 18, 2012 with a history of right knee injury due to slip, twist and fall the day prior. Dr. Ronald Klebacher, an osteopathic physician practicing emergency medicine, diagnosed right knee sprain.

In an April 16, 2012 decision, OWCP denied appellant's claim on the grounds that the medical evidence is not sufficient to establish that a medical condition was diagnosed in connection with the claimed work incident.

Appellant's counsel requested reconsideration on July 3, 2012. He argued that Dr. Ahmed had provided the necessary rationalized medical evidence necessary to support causal relationship between the diagnosed torn medial meniscus and the work incident of January 17, 2012.

In support of his request for reconsideration, appellant submitted a May 7, 2012 report from Dr. Ahmed, who initially noted that appellant had sought medical attention the day after the January 17, 2012 incident. Dr. Ahmed related that he had initially evaluated appellant on January 27, 2012 at which time appellant had informed him that on January 17, 2012 while at

work he slipped on a step, tried to hold onto something and had a sudden twisting motion to the right knee. Appellant had no prior history of right knee injury. He was seen in the hospital, x-rays were done and he was treated conservatively with anti-inflammatory medication. Dr. Ahmed explained that, while he had previously reported torn medial meniscus, this should have been stated as rule out meniscal tear. He related that appellant had pain and joint effusion and his clinical presentation was of meniscal tear, which was why he had tried to obtain authorization for an MRI scan evaluation of the knee. Dr. Ahmed also noted that his own review of appellant's x-rays showed some narrowing of the medial joint line of the right knee. Physical examination revealed tenderness in the medial joint line, with small joint effusion which was 1+. Dr. Ahmed concluded that appellant's diagnoses were rule out torn medial meniscus, right knee secondary to traumatic injury to the right knee; and joint effusion, 1+ which most probably would have to be treated by arthroscopic evaluation of the right knee. He again reiterated that appellant had no prior history of right knee injury and that the slip on a step, with a sudden twisting motion did substantiate that the injury was work related.

In a September 24, 2012 decision, OWCP denied modification of the prior decision, on the grounds that appellant had not established that he sustained a work-related injury.

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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.²

OWCP regulations, at 20 C.F.R. § 10.5(ee) 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.³ To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether fact of injury is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁴

² *Gary J. Watling*, 52 ECAB 278 (2001).

³ 20 C.F.R. § 10.5(e); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁴ *Supra* note 2.

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁵ 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 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.⁶ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁷

ANALYSIS

The Board finds that this case is not in posture for decision. The Board finds that the incident occurred as alleged. Appellant was delivering his route on January 17, 2012 when he slipped on a step and twisted his right knee while attempting to catch himself from falling. There is no contradictory evidence of record. The history of injury provided by appellant and the histories provided by Dr. Ahmed are in agreement that appellant twisted his knee as he slipped on the stairs.

The Board also finds that medical evidence of record generally supports that this incident caused a medical condition.

The record substantiates that appellant was seen by Dr. Klebacher in the Community Medical Center on January 18, 2012. Appellant related his history of injury and Dr. Klebacher diagnosed right knee strain. The record also contains multiple reports from Dr. Ahmed, who consistently reported appellant's history of injury and noted that appellant had no prior history of right knee injury. Dr. Ahmed diagnosed right knee joint effusion, which he related would likely require arthroscopic treatment, he also stated a provisional diagnosis of rule out torn medial meniscus. He explained that this diagnosis was based upon the x-ray findings, as well as physical examination, but he continued to recommend an MRI scan examination for definite diagnosis. Dr. Ahmed also explained that the slip on stairs and twisting motion could have caused appellant's knee conditions.

The Board finds that, while the medical reports of record lack detailed medical rationale sufficient to discharge appellant's burden of proof that he sustained a specific injury on January 17, 2012, it is clear that they are supportive of appellant's claim that he did sustain a right knee injury and are sufficient to require further development of the medical evidence.⁸

⁵ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁷ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁸ *Shirley A. Temple*, 48 ECAB 404 (1997).

It is well established that proceedings under FECA are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.⁹ The case shall therefore be remanded to OWCP for further development of the medical evidence. OWCP should refer appellant to a second opinion physician to determine whether any of appellant's diagnosed conditions were causally related to the accepted incident. It shall also request an opinion from the second opinion physician as to whether an MRI scan examination is necessary for diagnosis of appellant's right knee condition. After such further development as deemed necessary, OWCP shall issue an appropriate decision.

CONCLUSION

The Board finds that this case is not in posture for decision regarding whether appellant sustained an injury on January 17, 2012.

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2012 decision of the Office of Workers' Compensation Programs be set aside and the case remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: May 2, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

⁹ See *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Caralone*, 41 ECAB 354 (1989).