United States Department of Labor
Employees' Compensation Appeals Board

V.H., Appellant	)	
and	)	**Docket No. 14-324**
	)	**Issued: April 21, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Jacksonville, FL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 26, 2013 appellant filed a timely appeal from an August 1, 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 met his burden of proof to establish that he sustained an injury to the left knee causally related to factors of his federal employment.

FACTUAL HISTORY

On February 9, 2013 appellant, then a 56-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that he injured his left knee on February 8, 2013 after exiting his

[1] 5 U.S.C. § 8101 *et seq.*

postal vehicle and stepping onto grass. His supervisor checked a box confirming that appellant had been injured in the performance of duty and noted that he had not missed work.

In a statement dated February 8, 2013, appellant noted that he had injured his left knee by stepping out of his vehicle on uneven ground and turning his left foot. He stated that two and a half hours later, he was able to continue delivery.

On February 9, 2013 James C. Whited, a nurse practitioner, stated that appellant had knee strain and recommended that he work only light duty for 10 days.

In a February 19, 2013 letter, OWCP notified appellant of the deficiencies of his claim. It afforded him 30 days for the submission of additional medical evidence, including a detailed account of the alleged injury and a physician's report with a diagnosis and a rationalized opinion as to the cause of the diagnosed condition.

In response, appellant submitted a March 8, 2013 report from Dr. Mark S. Frisk, a Board-certified radiologist, diagnosing him *via* a magnetic resonance imaging (MRI) scan with an age-indeterminate small vertical radial tear of the medial meniscus at the junction of the posterior horn and body; an acute or subacute grade one medial collateral ligament (MCL) strain; and an age-indeterminate small joint effusion. He also submitted a duplicate of Mr. Whited's February 9, 2013 report and another report from Mr. Whited from the same date.

By decision dated March 26, 2013, OWCP denied appellant's claim. It found that the medical evidence was insufficient to establish a causal relationship between his left knee condition and the February 8, 2013 employment incident.

On April 5, 2013 appellant requested a review of the written record. He submitted a statement from the same date alleging that he had not received a questionnaire from OWCP and also submitted a limited-duty job offer from the employing establishment dated March 20, 2013. Appellant resubmitted Dr. Frisk's March 8, 2013 report.

In a February 25, 2013 report, Dr. Edward D. Young, a Board-certified orthopedic surgeon, diagnosed appellant with a left medical meniscus tear. He checked boxes indicating that appellant's injury was work related, that an injury was the major contributing cause for his reported medical condition, the treatment recommended and the functional limitations determined, but did not list a date of injury and listed appellant's employing establishment as "unknown." Dr. Young recommended an MRI scan of appellant's knee and stated that appellant should be limited to a desk job only. In a duty status report of the same date, he described recommended work restrictions and stated that appellant's injury occurred when he stepped on uneven grass and felt tightness in his knee. On this document, Dr. Young listed the date of injury as February 8, 2013.

In another report dated February 25, 2013, Dr. Young reviewed x-rays of appellant's left knee, which revealed no definitive fractures or lesions and good preservation of the joint space. Appellant told Dr. Young that he injured his knee when he was walking, stepped in a hole and felt his knee give out. On physical examination, Dr. Young noted that appellant had point tenderness about the medial compartment of the left knee, a positive medial Apley's grind test, a positive medial McMurray's test, a negative Homans' sign, slightly increased pain with valgus

stress, a negative Lachman's test, a negative anterior and posterior drawer sign and mild joint effusion. He recommended an MRI scan.

On April 4, 2013 Dr. Young, on review of an MRI scan, diagnosed appellant with a grade one medial collateral ligament tear, a radial tear of the medial meniscus and joint effusion. On physical examination, he noted that appellant had a negative McMurray's test and a positive medial Apley's grind test. Dr. Young recommended conservative management and physical therapy. In a form report of the same date, he listed appellant's date of injury as January 28, 2013 and his employing establishment as "unknown." Dr. Young recommended work restrictions of no squatting, kneeling, climbing or lifting of over 10 pounds.

In a report dated May 23, 2013, Dr. Denver D. Nutter, Board-certified in family medicine, checked boxes indicating that appellant's injury was work related, that an injury was the major contributing cause for appellant's reported medical condition, the treatment recommended and the functional limitations determined.[2] He diagnosed appellant with knee strain and stated that the injury occurred at 2:30 a.m. on February 8, 2013. Dr. Nutter recommended that appellant be on light duty for 10 days, with no prolonged standing, walking, squatting or repetitive use of stairs.

By decision dated August 1, 2013, OWCP's hearing representative affirmed the March 26, 2013 decision. He found that the medical evidence did not adequately explain causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 filed within the applicable time limitation; that an injury was sustained while 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.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

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.[6] First, 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.[7] Second, the

[2] This report appears to be the same as Mr. Whited's February 9, 2013 report, but attested by Dr. Nutter and with additional work restrictions listed.

[3] *Supra* note 1.

[4] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364, 366 (2006).

[5] *S.P.*, 59 ECAB 184, 188 (2007); *Joe D. Cameron*, 41 ECAB 153, 157 (1989).

[6] *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4 n.5.

[7] *D.B.*, 58 ECAB 464, 466 (2007); *David Apgar*, 57 ECAB 137, 140 (2005).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[9] An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.[10]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[11] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and compensable employment factors.[12] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[13]

ANALYSIS

OWCP accepted that the employment incident of February 8, 2013 occurred at the time, place and in the manner alleged; that a medical condition had been diagnosed. The issue is whether appellant's left knee condition resulted from the February 8, 2013 employment incident. The Board finds that he did not meet his burden of proof to establish a causal relationship between the knee condition for which compensation is claimed and the employment incident.

The medical evidence submitted by appellant included reports from Drs. Young and Nutter, which contained diagnoses and examination findings. On April 4, 2013 Dr. Young, on review of an MRI scan, diagnosed appellant with a grade one medial collateral ligament tear, a radial tear of the medial meniscus and joint effusion. On May 23, 2013 Dr. Nutter diagnosed appellant with knee strain and checked boxes indicating that appellant's injury was work related, that an injury was the major contributing cause for appellant's reported medical condition, the treatment recommended and the functional limitations determined. In a form report dated

[8] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734, 737 (2008); *Bonnie A. Contreras*, *supra* note 4 n.5.

[9] *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[10] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[11] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

[12] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

[13] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

February 25, 2013, Dr. Young checked the same boxes, but did not list a date of injury and listed appellant's employing establishment as "unknown." In a duty status report of the same date, he described recommended work restrictions and stated that appellant's injury occurred when he stepped on uneven grass and felt tightness in his knee. Neither Dr. Young nor Dr. Nutter, however, sufficiently explained the process through which the February 8, 2013 incident physiologically caused or aggravated the claimed right knee condition. Medical conclusions unsupported by rationale are of little probative value.[14] Furthermore, the Board has held that a report that addresses causal relationship with a checkmark, without a medical rationale explaining how work conditions caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship.[15]

Dr. Frisk diagnosed appellant with an age-indeterminate small vertical radial tear of the medial meniscus at the junction of the posterior horn and body; an acute or subacute grade one medial collateral ligament (MCL) strain; and an age-indeterminate small joint effusion. He did not, however, provide an opinion on the cause of these conditions. Similarly, Dr. Young's February 25, 2013 report reviewed x-rays of appellant's left knee and his report of April 4, 2013 reviewed an MRI scan. Again Dr. Frisk did not address the cause of appellant's condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[16]

Reports from Mr. Whited, a nurse practitioner, do not constitute probative medical evidence, as nurse practitioners do not qualify as physicians under FECA. Therefore, they are insufficient to establish appellant's claim.[17]

Appellant expressed his belief that his left knee condition resulted from the February 8, 2013 employment incident. The Board has held that the fact that a condition manifests itself or worsens during a period of employment[18] or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between a claimed condition and employment factors.[19] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[20] Causal relationship must be substantiated by rationalized medical opinion

[14] *Willa M. Frazier*, 55 ECAB 379, 384.

[15] *See Calvin E. King, Jr.*, 51 ECAB 394, 401 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843, 852 (1990).

[16] *Michael E. Smith*, 50 ECAB 313, 316 n.8 (1999).

[17] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as physician as defined in 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: (2) "physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[18] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[19] *B.B.*, Docket No. 13-256 (issued August 13, 2013); *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

[20] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by the work-related incident is not determinative.

OWCP advised appellant that it was his responsibility to provide a comprehensive medical report describing his symptoms, test results, diagnoses, treatment and the physician's opinion, with medical reasoning, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to OWCP's request. As there is no probative, rationalized medical evidence addressing how his claimed left knee condition was caused or aggravated by his employment, he has not met his burden of proof to establish that he sustained an injury in the performance of duty causally related to factors of his federal employment.

Appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal.[21] Appellant may submit this or any other 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 to establish that he sustained a traumatic injury in the performance of duty on February 8, 2013.

[21] 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the August 1, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2014
Washington, DC

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

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

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