United States Department of Labor
Employees' Compensation Appeals Board

V.P., Appellant	)	
	)	
and	)	**Docket No. 14-306**
	)	**Issued: July 25, 2014**
U.S. POSTAL SERVICE, POST OFFICE, White Plains, 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:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 25, 2013 appellant, through his attorney, filed a timely appeal from an August 12, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim. 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.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish that his right knee condition is causally related to a September 18, 2012 employment incident.

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

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the August 12, 2013 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On September 18, 2012 appellant, then a 50-year-old automotive lead technician, filed a traumatic injury claim (Form CA-1) alleging that he injured his right knee as a result of stepping out of a vehicle in the performance of duty that day. He stated that his foot slipped off the front rail of the lift and he twisted his right knee.

An OWCP Form CA-16, authorization for examination, was issued by the employing establishment on September 20, 2012. Appellant was authorized to receive treatment at White Plains Hospital in White Plains, New York. He submitted hospitals records dated September 18, 2012 from White Plains Hospital. Dr. Jeffrey Mayer, a Board-certified emergency medicine specialist, advised that appellant slipped at work and diagnosed right knee sprain.

A September 18, 2012 x-ray of the right knee revealed a small effusion, degenerative changes and loose bodies but no sign of fracture, subluxation or bone destruction.

In a November 19, 2012 letter, OWCP notified appellant of the deficiencies of his claim. It afforded him 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted reports dated September 25, 2008 through December 8, 2012 from Dr. Daniel Zelazny, a Board-certified orthopedic surgeon. On March 25, 2010 Dr. Zelazny listed a history that appellant sustained a right knee injury while he was in Nevada. He diagnosed possible symptomatic medial meniscal tear versus loose body and obtained an x-ray that day, which showed a possible small anterior loose body. On April 5, 2010 Dr. Zelazny advised that a March 30, 2010 magnetic resonance imaging (MRI) scan showed a small vertical tear at the posterior horn of the medial meniscus. Appellant declined arthroscopic surgery until at least the end of the summer.

In a November 19, 2012 report, Dr. Zelazny indicated that appellant jumped off a truck at work on September 18, 2012 and landed on his right knee which buckled and cracked. He diagnosed possible symptomatic right knee medial meniscal tear as well as possible intra-articular loose body and opined that appellant was totally disabled for work. Dr. Zelazny noted that appellant had a prior history of right knee evaluation over two years prior, when he had an MRI scan that revealed a small vertical tear of the medial meniscus and some degenerative changes. He indicated that diagnostic testing of the right knee taken that day revealed medial joint space narrowing and questionable intra-articular loose body best seen on the lateral view. On December 4, 2012 Dr. Zelazny diagnosed right knee meniscal tear, degenerative joint disease and osteochondral injury and recommended a right knee arthroscopy.

An x-ray of the right knee dated November 19, 2012 revealed no acute osseous or articular abnormality.

A November 23, 2012 MRI scan of the right knee showed a sprain/partial tear of the anterior cruciate ligament, grade 3 sprain lateral collateral ligament, lateral meniscal tear, fraying at the posterior horn medial meniscus, osteoarthritis with cartilage abnormality and no obvious intra-articular loose body.

By decision dated January 31, 2013, OWCP denied the claim finding that appellant had failed to establish fact of injury.

On February 25, 2013 appellant, through his attorney, requested a review of the written record by an OWCP hearing representative. He submitted a February 18, 2013 report from Dr. Zelazny who reiterated his diagnoses and indicated that appellant was not unstable from his partial anterior cruciate ligament (ACL) tear or sprain of his lateral collateral ligament (LCL) based on his clinical examination. On June 17, 2013 Dr. Zelazny released appellant to light duty for six hours as of June 19, 2013 with restrictions of no bending, squatting, kicking or lifting anything heavy over 20 pounds. In a July 11, 2013 report, he stated that appellant presented with a new issue after his right knee gave way and he fell onto his left knee, which had significant pain and swelling. On July 25, 2013 Dr. Zelazny noted that appellant was still pending approval for a planned right knee arthroscopy to address his September 18, 2012 injury. He stated that "it seems evident that the injury sustained at work on September 18, 2012 resulted in new injuries, which were not present previously" and could be seen based upon comparison of MRI scans.

By decision dated August 12, 2013, an OWCP hearing representative affirmed the January 31, 2013 decision. It accepted that appellant sustained the September 18, 2012 incident but denied the claim on the basis that the medical evidence submitted was not sufficient to establish a causal relationship between his right knee condition and the September 18, 2012 employment incident.

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 timely filed within the applicable time limitation period of FECA, that an injury[4] was sustained in the performance of duty, as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[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. A fact of injury determination is based on two elements. 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment

[3] *See supra* note 1.

[4] OWCP regulations 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. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[5] *See T.H.*, 59 ECAB 388 (2008). *See also Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[6]

Causal relationship is a medical issue 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 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.[7]

ANALYSIS

OWCP accepted that the employment incident of September 18, 2012 occurred at the time, place and in the manner alleged. The issue is whether appellant's right knee condition resulted from the September 18, 2012 employment incident. The Board finds that he did not meet his burden of proof to establish a causal relationship between his knee condition for which compensation is claimed and the employment incident.

On March 25, 2010 Dr. Zelazny indicated that appellant sustained a right knee injury while he was vacationing in Nevada. He diagnosed possible symptomatic medial meniscal tear versus loose body and obtained an x-ray that day, which showed a possible small anterior loose body. On April 5, 2010 Dr. Zelazny indicated that a March 30, 2010 MRI scan showed a small vertical tear at the posterior horn of the medial meniscus. Appellant declined arthroscopic surgery until at least the end of the summer.

On November 19, 2012 Dr. Zelazny obtained a history that appellant jumped off a truck at work on September 18, 2012 and landed on his right knee which buckled and cracked. He diagnosed possible symptomatic right knee medial meniscal tear as well as possible intra-articular loose body and opined that appellant was totally disabled for work. Dr. Zelazny noted that appellant had a right knee evaluation over two years prior, when he had an MRI scan that revealed a small vertical tear of the medial meniscus and some degenerative changes. He stated that diagnostic testing of the right knee taken that day revealed medial joint space narrowing and questionable intra-articular loose body best seen on the lateral view. On December 4, 2012 Dr. Zelazny diagnosed right knee meniscal tear, degenerative joint disease and osteochondral injury and recommended a right knee arthroscopy. On February 18, 2013 he reiterated his diagnoses and indicated that appellant was not unstable from his partial ACL tear or sprain of his LCL based on his clinical examination. On June 17, 2013 Dr. Zelazny released appellant to light duty for six hours as of June 19, 2013 with restrictions of no bending, squatting, kicking or lifting anything heavy over 20 pounds. In a July 11, 2013 report, he indicated that appellant presented with a new issue after his right knee gave way and he fell onto his left knee, which had significant pain and swelling. On July 25, 2013 Dr. Zelazny indicated that appellant was still pending approval for a planned right knee arthroscopy to address his September 18, 2012 injury. He stated that "it seems evident that the injury sustained at work on September 18, 2012 resulted

[6] *Id. See Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

[7] *Id. See Gary J. Watling*, 52 ECAB 278 (2001).

in new injuries, which were not present previously" and could be seen based upon comparison of MRI scans.

The Board finds that Dr. Zelazny failed to provide an adequate opinion explaining how factors of appellant's federal employment, such as stepping out of a vehicle at work, caused or aggravated his right knee condition. Dr. Zelazny noted that appellant's condition occurred while he was at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how his physical activity at work caused or aggravated the diagnosed conditions.[8] Further, he failed to provide a narrative in 2012 or 2013 setting forth a full and accurate history of appellant's condition, including a comparison of any diagnostic testing obtained after September 18, 2012 with prior tests. Dr. Zelazny's opinion does not adequately address how the September 18, 2012 employment incident contributed to appellant's preexisting right knee condition. The Board finds that the reports from him are insufficient to establish that appellant sustained an employment-related injury.

On September 18, 2012 Dr. Mayer indicated that appellant slipped at work and diagnosed right knee sprain. He did not provide sufficient medical rationale explaining how appellant's condition was caused or aggravated by slipping at work on September 18, 2012. Thus, the Board finds that appellant did not meet his burden of proof with this submission.

The November 23, 2012 MRI scan and x-rays dated March 25, 2010 and September 18 and November 19, 2012, do not constitute competent medical evidence as they do not contain rationale by a physician relating appellant's disability to his employment.[9] As such, the Board finds that appellant did not meet his burden of proof with these submissions.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to a September 18, 2012 employment incident, he has failed to meet his burden of proof to establish a claim for compensation.

On appeal, counsel contends that OWCP's decision is contrary to fact and law. For the reasons stated above, the Board finds the attorney's arguments are not substantiated.

The Board notes that the employing establishment issued appellant a CA-16 form on September 20, 2012 authorizing medical treatment. The Board has held that where an employing establishment properly executes a CA-16 form, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.[10] Although OWCP denied appellant's claim for an injury, it did

[8] *See K.W.*, Docket No. 10-98 (issued September 10, 2010).

[9] *See* 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 also Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

[10] *See D.M.*, Docket No. 13-535 (issued June 6, 2013). *See also* 20 C.F.R. §§ 10.300, 10.304.

not address whether he is entitled to reimbursement of medical expenses pursuant to the CA-16 form. Upon return of the case record, OWCP should further address this issue.

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 not met his burden of proof to establish that his right knee condition is causally related to a September 18, 2012 employment incident, as alleged. On return of the record, OWCP should consider the CA-16 form issued in this case.

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 25, 2014
Washington, DC

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

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

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