United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	**Docket No. 14-41**
	)	**Issued: March 7, 2014**
DEPARTMENT OF HOMELAND SECURITY, FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION, Forest Hills, NY, 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
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 16, 2013 appellant filed a timely appeal from a September 5, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury 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.

ISSUE

The issue is whether appellant sustained an injury on November 10, 2012 in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 25, 2013 appellant, then a 56-year-old transportation security administration officer, filed a traumatic injury claim alleging that on November 10, 2012 he injured his right knee while climbing into a bunk in the performance of duty. He did not stop work.

In an authorization for examination and/or treatment (Form CA-16) dated July 19, 2013, Dr. Brett M. Barnhart, a Board-certified orthopedic surgeon, described the history of injury as right knee pain that had increased around eight months earlier. He diagnosed moderate degenerative arthritis and a medial meniscus tear of the right knee. Dr. Barnhart advised that he was unable to currently determine whether the diagnosed condition was caused or aggravated by the described employment activity without further evaluation. He recommended a right knee arthroscopy.

By letter dated July 31, 2013, OWCP requested that appellant submit additional factual and medical information, including a detailed report from his attending physician addressing the cause of any diagnosed condition and its relationship to the alleged work incident.

In a report dated June 28, 2013, received by OWCP on August 14, 2013, Dr. Barnhart noted that appellant had experienced knee pain for 15 years that increased "after he went for Hurricane Sandy relief for 43 days in Nov[ember]/Dec[ember] and was climbing into a bunk." He diagnosed right lower leg joint pain and primary, localized osteoarthrosis of the right lower leg. Dr. Barnhart noted that [appellant's] pain was of "insidious onset, with gradual progression; [he] has some pain associated with working in a ship in New York…."

A July 8, 2013 magnetic resonance imaging (MRI) scan study of the right knee revealed a complex posterior horn medial meniscal tear and osteoarthritis.

In a progress report dated July 17, 2013, Dr. Barnhart reviewed the results of an MRI scan study and diagnosed a right tear of the medial cartilage of the knee. He indicated that appellant related a history of anterior and medial pain "of insidious onset, with gradual progression…." Dr. Barnhart recommended arthroscopic surgery.

In a statement dated July 26, 2013, appellant related that on November 10, 2012 he was stationed on a ship as part of a surge capacity team. He stated, "As I was attempting to climb up to the bunk by stepping on an approximately two-inch wide angle iron step, then slide under the side safety rail of the bunk, I felt a pain in my right knee. I thought it was a pulled muscle or tendon and continued to work." Appellant related that the pain increased over time. When he returned home in December 2012 he made an appointment with his physician who treated him with cortisone injections. Appellant's pain lessened but he had difficulty with movement. In May 2013, his physician referred him to a specialist, who diagnosed a torn meniscus.

In a duty status report dated August 19, 2013, Dr. Barnhart found that appellant could return to work with restrictions.[2] He referred to his office notes for the diagnosis and description of how the injury occurred.

By decision dated September 5, 2013, OWCP denied appellant's claim after finding that the medical evidence was insufficient to establish that he sustained a diagnosed condition causally related to the accepted November 10, 2012 work 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 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 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.[6] 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.[7] 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.[8]

ANALYSIS

Appellant alleged that he sustained an injury to his right knee on November 10, 2012 while climbing into a bunk on a ship. He has established that the November 10, 2012 incident occurred at the time, place and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that appellant sustained an injury as a result of this incident.

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[2] On August 1, 2013 Dr. Barnhart performed a right knee partial medial meniscectomy, patellofemoral chondroplasty and a medial femoral chondroplasty.

[3] *Supra* note 1.

[4] *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[5] *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[6] *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

[7] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[8] *Id.*

The Board finds that appellant has not established that the November 10, 2012 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.[9]

In a report dated June 28, 2013, Dr. Barnhart discussed appellant's history of knee pain for 15 years that worsened in November or December after he climbed into a bunk at work. He noted that the knee pain was of gradual onset and that some of the pain occurred at work on a ship. Dr. Barnhart diagnosed right lower leg joint pain and primary, localized osteoarthrosis of the right lower leg. He did not, however, attribute the right lower leg joint pain and osteoarthrosis to appellant's November 10, 2012 employment injury. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[10]

On July 17, 2013 Dr. Barnhart diagnosed a right tear of the medial cartilage of the knee. He described appellant's history of gradually progressing anterior and medial pain of insidious origin. As Dr. Barnhart did not relate the medial tear to the November 10, 2012 work incident, his opinion is insufficient to meet appellant's burden of proof.[11]

In a July 19, 2013 Form CA-16, Dr. Barnhart provided a history of appellant experiencing right knee pain with increased symptoms beginning eight months ago.[12] He diagnosed moderate degenerative arthritis and a medial meniscus tear of the right knee. Dr. Barnhart indicated that he could not assess whether the diagnosed condition was caused or aggravated by the described employment activity. As he declined to provide an opinion on causation, his report is of little probative value.

In a duty status report dated August 19, 2013, Dr. Barnhart found that appellant could return to work with restrictions. He referred to his office notes for the diagnosis and history of injury. A physician, however, must provide a narrative description of the employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.[13]

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.[14] Appellant must submit a physician's report in which the physician reviews those

[9] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

[10] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

[11] *Id*.

[12] The Board notes that a properly executed Form CA-16 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. *See Tracey P. Spillane*, 54 ECAB 608 (2003) and 20 C.F.R. § 10.300(c).

[13] *John W. Montoya*, 54 ECAB 306 (2003).

[14] *See D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

factors of employment identified by him as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.[15] He failed to submit such evidence and therefore failed to discharge his burden of proof.

On appeal, appellant submitted additional medical evidence. The Board has no jurisdiction to review new evidence on appeal.[16] 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury on November 10, 2012 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 7, 2014
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

[15] *See D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).

[16] *See* 20 C.F.R. § 501.2(c).