United States Department of Labor
Employees' Compensation Appeals Board

B.S., Appellant	)	
and	)	**Docket No. 13-2010**
	)	**Issued: September 26, 2014**
U.S. POSTAL SERVICE, PROCESSING & DISTIBUTION CENTER, Greensboro, NC, Employer	)	

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

Oral Argument September 16, 2014

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 3, 2013 appellant filed a timely application for review from a March 21, 2013 nonmerit decision and an August 23, 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.

ISSUES

The issues are: (1) whether OWCP properly denied appellant's request for an oral hearing; and (2) whether appellant met his burden of proof to establish a traumatic injury in the performance of duty on November 24, 2010.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 3, 2012 appellant, then a 61-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on November 24, 2010 he twisted his right knee upon descending a ladder after retrieving mail. His supervisor checked a box indicating that he had been injured in the performance of duty. An OWCP Form CA-16, authorization for examination and/or treatment was issued by the employing establishment on October 3, 2012.[2]

By letter dated October 3, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It noted that he had not provided evidence sufficient to support that his claim was timely filed, that he actually experienced the traumatic incident alleged to have caused injury, that he had been diagnosed with a condition resulting from such injury, that he was within the performance of duty, or that a physician had opined as to how his injury resulted in the condition diagnosed. OWCP afforded appellant 30 days to submit additional evidence and respond to its inquiries.

In a report dated October 3, 2012, Dr. Peter G. Dalldorf, a Board-certified orthopedic surgeon, assessed appellant with moderate right unicompartment degenerative joint disease. Appellant told Dr. Dalldorf he had twisted his right knee in November 2010 when he was "coming down off of a bumper device." Dr. Dalldorf stated that appellant had increasing discomfort in the right knee over the ensuing months, localized laterally in the patellofemoral area of the right knee. He noted that appellant had previous knee surgery, but could not recall whether it was for the right or left knee. Dr. Dalldorf recommended a knee brace and noted that appellant continued to work regular duty.

On October 31, 2012 Dr. Dalldorf assessed appellant with mild to moderate right medial compartment degenerative joint disease. He noted that appellant's current discomfort was mild, but that it worsened when performing duties of crawling, climbing or squatting. Dr. Dalldorf stated that he thought it was "okay" that appellant was working regular duty with a hinged knee brace.

By decision dated November 16, 2012, OWCP denied appellant's claim. It found that he had not established a causal relationship between his right knee condition and the incident of November 24, 2010.

Appellant requested an oral hearing before an OWCP hearing representative on February 14, 2013. He also requested reconsideration on this date.[3]

[2] The Board has held that where an employing establishment properly executes a Form CA-16, 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. This Form CA-16 however was not properly completed as it did not authorize treatment by a specific medical provider. *See D.M.*, Docket No. 13-535 (issued June 6, 2013). *See also* 20 C.F.R. § 10.300.

[3] By letter dated February 26, 2013, OWCP informed appellant that because he could only request one type of appeal at a time, the Branch of Hearings and Review (BHR) currently had jurisdiction over his request and that once BHR had made a decision, he would be advised of his rights to appeal at that time.

In a report dated December 17, 2012, Dr. Dalldorf noted that he may have performed an arthroscopy on appellant's right knee 15 years before, but he could not be certain because there were no scars on either knee and he did not have records of the procedure. He stated that appellant had a documented injury that occurred "about two years back when he [was] coming down off a bumper device and twisted his right knee." On examination, Dr. Dalldorf noted mild crepitation on full extension, pain to the posterior medial joint line to palpation and a positive McMurray test for pain. He found right knee chondromalacia with a probable torn meniscus, a right shoulder arthroscopy from 2011, and lumbar spondylosis. Dr. Dalldorf noted that appellant told him that the duties of his position had changed such that he was kneeling and climbing more, leading to increased pain in his knee. He stated that appellant was "now about two years from a twisting injury and this is getting worse, at least in part due to the nature of his new job responsibilities." Appellant's history and examination were consistent with a meniscal injury with a history of a twisting injury coming down off a piece of machinery. Dr. Dalldorf noted that it was also consistent with an exacerbation of moderate degenerative changes, and that a magnetic resonance imaging (MRI) scan would be required to discover the nature of his condition.

Appellant attached a statement dated February 15, 2013 to Dr. Dalldorf's December 17, 2012 report. He noted that he injured his right knee on November 24, 2010 while descending a buffer and that he notified his supervisor immediately. Appellant informed his supervisor that he did not wish to seek medical attention at that time and completed a form declining to file a claim for compensation at that time. He noted there were no witnesses to his injury, and that the effects of the injury included pain, swelling, tenderness while bearing weight and a slight limp while walking. Appellant stated that his symptoms were most problematic at work while kneeling on concrete floors or climbing conveyor belts.

In an undated form letter, a supervisor indicated that on November 24, 2010, appellant advised him that he did not wish to file a claim for traumatic injury, and he had three years to file a claim, if he chose to do so. Both appellant and a supervisor signed the letter. The letter noted that, if appellant completed both a declination and a Form CA-1, the declination would be void.

By decision dated March 21, 2013, OWCP denied appellant's request for an oral hearing as untimely.

Appellant requested reconsideration of OWCP's November 16, 2012 decision by letter dated July 15, 2013 but not received until August 19, 2013. In an attached statement, appellant noted that Dr. Dalldorf had associated his right knee condition to the work he performed, which strained his knee. He stated that, if his case was not traumatic in nature, then he should have been instructed to submit an occupational disease claim; but he was not instructed to do so. Appellant noted that Dr. Dalldorf recommended surgery for a meniscus tear to his right knee due to a traumatic injury that occurred on March 4, 2013 under case Claim No. xxxxxx279.[4] Appellant resubmitted the October 3 and 31, and December 17, 2012 reports of Dr. Dalldorf, with the undated letter declining to file a Form CA-1.

[4] Appellant submitted to the record a Form CA-1 notice of traumatic injury and claim for compensation relating to an incident on March 4, 2013.

By decision dated August 23, 2013, OWCP denied appellant's request for reconsideration. The decision reflects that it reviewed Dr. Dalldorf's reports, noting that he assessed appellant with chondromalacia and a probable meniscus tear. OWCP found that he had not submitted sufficient evidence to warrant review of the November 16, 2012 decision, noting that "the specific deficiency is that the evidence is still not sufficient to establish causal relationship." The decision noted that appellant had filed a claim under Claim No. xxxxxx279 following a trip and fall at work on March 4, 2013 which had been accepted.

LEGAL PRECEDENT -- ISSUE 1

Section 8124(b)(1) of FECA provides that "a claimant for compensation not satisfied with a decision of the Secretary [...] is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[5] Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.[6] A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.[7] Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.[8] OWCP's procedures require that it exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).[9]

ANALYSIS -- ISSUE 1

A request for a hearing must be made within 30 days after issuance of a final decision by OWCP. Appellant requested an oral hearing before the Branch of Hearings and Review on February 14, 2013. As his request was submitted more than 30 days following issuance of the November 16, 2012 decision, it was untimely filed.

OWCP has the discretionary authority to grant a review of the written record when a claimant is not entitled to a review of the written record as a matter of right. The Board finds that OWCP, in its March 21, 2013 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant's request for an oral hearing because his claim could be addressed through a reconsideration application. The Board has held that the only limitation on OWCP's authority is reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of

[5] 5 U.S.C. § 8124(b)(1).

[6] 20 C.F.R. §§ 10.616-618.

[7] *Id.* at § 10.616(a).

[8] *Eddie Franklin*, 51 ECAB 223, 227 (1999); *Delmont L. Thompson*, 51 ECAB 155, 157 (1999).

[9] *See R.T.*, Docket No. 08-408 (issued December 16, 2008).

judgment, or actions taken which are contrary to both logic and probable deduction from established facts.[10] The record establishes that OWCP properly exercised its discretion in connection with its denial of appellant's request for an oral hearing.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA[11] 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.[12] 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.[13]

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.[14] 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.[15] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[16]

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.[17] 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.[18]

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[10] *Teresa M. Valle*, 57 ECAB 542 (2006).

[11] 5 U.S.C. § 8101 *et seq.*

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

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

[14] *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 12 at n.5.

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

[16] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734, 737 (2008); *Bonnie A. Contreras*, *supra* note 12 at n.5.

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

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

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[19] 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.[20] 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.[21]

ANALYSIS -- ISSUE 2

Appellant filed a claim for a traumatic injury on October 3, 2012 alleging that on November 24, 2010 he twisted his right knee upon descending a ladder after retrieving mail. OWCP denied his claim on November 16, 2012, finding that he had not submitted sufficient medical evidence to establish a causal relationship between his right knee condition and the incident of November 24, 2010. Appellant requested reconsideration and, by decision dated August 23, 2013, OWCP stated that it had not reviewed the merits of appellant's claim and declined his request for reconsideration. Although the August 23, 2013 decision stated that it was not a review of the merits of appellant's claim, the decision reflects that a merit review was conducted. The decision evaluated the medical evidence from Dr. Dalldorf, including his October 3 and 31, and December 17, 2012 reports. OWCP stated that the specific deficiency of appellant's request for reconsideration was that "the evidence is still not sufficient to establish causal relationship." The determination of whether the evidence submitted by appellant suffices to establish an element of his claim, rather than whether the standard for reconsideration has been met, constitutes a merit review. The August 23, 2013 decision of OWCP reviewed the merits of appellant's claim. The Board finds that it constitutes a merit decision of the evidence submitted by appellant.[22]

The issue is whether appellant submitted sufficient medical evidence to establish a causal relationship between his diagnosed conditions and the ladder incident of November 24, 2010.[23] The Board finds that appellant has not submitted sufficient medical evidence to establish causal

[19] *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).

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

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

[22] *See M.M.*, Docket No. 07-1657 (issued May 15, 2008).

[23] At oral argument, appellant contended that he had not filed an appeal in the present claim. As noted above, the docket file reflects that he filed a Form AB-1 application for review, listing Claim No. xxxxxx265, on September 3, 2013.

relationship as the medical reports provide insufficient explanation of how the employment incident of November 24, 2010 caused or contributed to his diagnosed right knee condition.[24]

In a December 17, 2012 report, Dr. Dalldorf noted that appellant had a documented injury that occurred "about two years back when he [was] coming down off a bumper device and twisted his right knee." He assessed appellant with right knee chondromalacia with a probable torn meniscus, a right shoulder arthroscopy from 2011 and lumbar spondylosis. Dr. Dalldorf stated that appellant was "now about two years from a twisting injury and this is getting worse, at least in part due to the nature of his new job responsibilities. Appellant's history and examination are consistent with a meniscal injury. He has a history of a twisting injury coming down off a piece of machinery and he has had pain off and on since that time, which would be quite consistent with a meniscal injury." Dr. Dalldorf further noted that it was also consistent with an exacerbation of moderate degenerative changes, and that an MRI scan would be required to discover the nature of his condition. The Board finds that Dr. Dalldorf did not provide adequate medical rationale on causal relationship other than noting that his findings were consistent with either a meniscal injury or exacerbation of moderate degenerative changes. Dr. Dalldorf did not explain in physiological terms how the specific incident of November 24, 2010 caused or contributed to appellant's right knee chondromalacia with a probable torn meniscus. The Board has long held that medical opinions not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet appellant's burden of proof.[25] Without any reasoning to support the conclusion that the findings were consistent with the history of injury, his reports are insufficient to meet appellant's burden of proof.[26]

Dr. Dalldorf's reports of October 3 and 31, 2012 contain findings on examination and reiterate the history of injury that appellant gave to him, but do not contain an opinion regarding the cause of appellant's conditions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[27] Hence, these reports are insufficient to meet appellant's burden of proof to establish a causal relationship between his conditions and the incident of November 24, 2010.

Appellant's burden of proof includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship between the employment and the diagnosed condition. As he has not submitted medical evidence from a physician explaining how his diagnosed conditions are causally related

[24] At oral argument, appellant noted that he had filed another claim for a right knee and shoulder strain due to a March 4, 2013 employment-related injury under Claim No. xxxxxx279, and contended that authorization for medical treatment had been denied under that claim. A footnote to the August 23, 2013 decision indicates that this claim had been approved. There is no evidence present in the case record of a final adverse decision by OWCP under Claim No. xxxxxx279; therefore, the Board lacks jurisdiction to review Claim No. xxxxxx279 in this decision.

[25] *Carolyn F. Allen*, 47 ECAB 240, 246 (1995).

[26] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

[27] *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

to specific work activities on November 24, 2010, the evidence is insufficient to meet his burden of proof.

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 OWCP properly denied appellant's request for an oral hearing. The Board further finds that he did not meet his burden of proof to establish that his claimed conditions were causally related to an employment-related incident on November 24, 2010.

ORDER

IT IS HEREBY ORDERED THAT the March 21, 2013 nonmerit decision of the Office of Workers' Compensation Programs is affirmed; and the August 23, 2013 merit decision is also affirmed.

Issued: September 26, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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