

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

S.M., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Cleveland, OH, Employer)

**Docket No. 15-582
Issued: April 22, 2015**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 23, 2015 appellant, through counsel, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs (OWCP) dated January 12, 2015. 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 this case.

ISSUE

The issue is whether appellant sustained a left knee condition in the performance of duty.

FACTUAL HISTORY

On June 7, 2013 appellant, a 57-year-old clerk, filed a Form CA-2 claim for benefits based on an occupational disease. He asserted on the form and in an accompanying statement

¹ 5 U.S.C. § 8101 *et seq.*

that he began experiencing left knee pain on September 17, 2010, which he believed was causally related to a work injury he sustained in 2006 under case number xxxxxx504.

On June 11, 2013 OWCP advised appellant that it required factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive report from a treating physician describing his symptoms and the medical reasons for his condition, with an opinion as to whether his claimed condition was causally related to his federal employment. OWCP requested that appellant submit this evidence within 30 days. Appellant did not submit any medical evidence.

By decision dated September 19, 2013, OWCP denied the claim finding that he failed to submit medical evidence establishing a left knee condition in the performance of duty.

Appellant, through his attorney, requested an oral hearing, which was held on March 18, 2014.

By decision dated May 29, 2014, OWCP's hearing representative affirmed the September 19, 2013 decision. She stated that appellant had indicated that he filed a prior knee claim in 2006 and underwent surgery, and had returned to work afterward. OWCP denied this claim in an August 6, 2008 decision, which the Board affirmed on July 14, 2009. The hearing representative found that appellant had asserted that his knee condition continued to worsen due to his work duties; he, however, had failed to submit any medical evidence with his claim.

By letter dated September 22, 2014, appellant, through counsel, requested reconsideration.

In a report dated October 5, 2011, received by OWCP on September 24, 2014, Dr. Audley M. Mackel, a specialist in orthopedic surgery, advised that appellant had complaints of left knee pain on examination. He stated that appellant underwent an arthroscopy of the left knee about four years previously to repair a torn left meniscus and had aggravated his knee condition secondary to bumping it approximately a year and a half ago. Dr. Mackel opined that the left knee was stable, with some mild, progressive patellar crepitus and some mild quad atrophy in the left knee, with minimal joint line tenderness. He recommended that appellant undergo a magnetic resonance imaging (MRI) scan of the left knee to rule out a new meniscal tear without effusion.

In a May 9, 2012 report, received by OWCP on September 24, 2014, Dr. Mackel advised that appellant continued to have some intermittent pain and swelling in the left knee. He related that he was able to walk, but had a sense of giving way and buckling about the knee. Dr. Mackel reiterated his recommendation for appellant to have an MRI scan of the left knee to rule out recurrent meniscal tear, given that he had been significantly symptomatic since his previous surgery.

In a May 9, 2012 report, received by OWCP on September 24, 2014, Dr. Mackel stated that appellant had undergone an MRI scan which showed a complex tear of the posterior horn of the left medial meniscus, with some chondral changes are noted. He advised that there was no evidence of "re-tear versus new tear." Dr. Mackel recommended that appellant continue with

present course of treatment and consider taking injections in his left knee to treat chondral changes.

Dr. Mackel submitted progress reports dated September through November 2012 and January, March, and July 2013, received by OWCP on September 24, 2014, in which he essentially reiterated his previous findings and conclusions.

By decision dated January 12, 2015, OWCP denied modification of the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing that 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized 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.⁵

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed left knee condition and his federal employment. This burden includes providing medical evidence from a physician who concludes

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

that the medical condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶

ANALYSIS

Appellant has failed to submit any medical opinion containing a rationalized, probative report which relates his claimed left knee condition to factors of his employment. For this reason, he has not discharged his burden of proof to establish his claim that these conditions were sustained in the performance of duty.

Appellant submitted numerous reports from Dr. Mackel who related appellant's complaints of left knee pain and presented diagnoses of left meniscus tear and chondral changes. However, in these reports he did not provide a rationalized medical opinion that these findings were causally related to factors of his employment. In his October 5, 2011 report, Dr. Mackel advised that he had undergone a left knee arthroscopy four years prior to repair a torn left meniscus and had aggravated his knee condition secondary to bumping it about a year and a half prior. He referred appellant for a left knee MRI scan because he believed appellant may have sustained a new meniscus tear. Dr. Mackel stated that appellant continued to have some significant symptoms, including intermittent pain, swelling and instability in the left knee. In his May 9, 2012 report, he stated that a left knee MRI scan revealed a complex tear of the posterior horn of the medial meniscus, with some chondral changes. Dr. Mackel instructed him to continue with his present course of treatment and consider having injections in his knee to treat the chondral changes. His reports, however, did not provide a probative, rationalized medical opinion that the claimed condition was causally related to employment factors. Dr. Mackel's opinion on causal relationship is of limited probative value as it does not contain any medical rationale as to how or why appellant's claimed left knee condition was currently affected by or related to factors of employment.⁷

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁸ Dr. Mackel did not sufficiently describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed condition. His opinion is of limited probative value as it does not contain any medical rationale explaining how appellant's job duties physiologically caused the diagnosed left knee condition. Dr. Mackel's reports thus did not constitute adequate medical evidence to establish that appellant's claimed left knee condition was causally related to his employment.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is

⁶ See *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁷ *William C. Thomas*, 45 ECAB 591 (1994).

⁸ See *Anna C. Leanza*, 48 ECAB 115 (1996).

sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

OWCP advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Consequently, appellant has not met his burden of proof in establishing that his claimed left knee condition was causally related to his employment.

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 failed to meet his burden of proof in establish that his claimed left knee condition was sustained in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2015 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 22, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁹ *Id.*