United States Department of Labor
Employees' Compensation Appeals Board

G.S., Appellant	)	
and	)	**Docket No. 14-1997**
	)	**Issued: February 4, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Green Tree, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 17, 2014 appellant filed a timely appeal from an August 26, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employee's 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

At issue is whether appellant met his burden of proof to establish a recurrence of disability beginning July 13, 2013 causally related to his accepted employment condition.

FACTUAL HISTORY

On January 29, 2001 appellant, then a 47-year-old letter carrier, filed a traumatic injury claim alleging that on January 27, 2001 he sustained a right knee injury when he slipped on a

[1] 5 U.S.C. § 8101 *et seq.*

newspaper that was hidden underneath snow. Appellant stopped work on January 31, 2001 and initially returned to light duty on February 2, 2001.

In a February 1, 2001 report, Dr. Gary Smith, a Board-certified orthopedic surgeon, noted the history of injury and related that appellant heard a pop after he twisted and hyperextended his knee. On physical examination, he found moderate effusion, tenderness along the medial joint line, and no lateral tenderness. A February 6, 2001 right knee magnetic resonance imaging (MRI) scan revealed a horizontal tear of the posterior horn from the medial meniscus, a possible tear of the anterior cruciate ligament (ACL), and a small popliteal cyst. In a February 26, 2001 surgery report, Dr. Smith advised that appellant underwent an arthroscopy, medial meniscectomy, and ACL reconstruction. On April 3, 2001 OWCP accepted appellant's claim for right knee meniscus tear and authorized the right knee arthroscopy.

In an October 4, 2001 report, Dr. Smith advised that appellant was eight months post ACL reconstruction, medial meniscectomy, and debridement of the medial compartment of the right knee. He opined that appellant's improvement had plateaued and advised that appellant related that he was able to return to normal activities. Dr. Smith stated that appellant still had some occasional aching after time on his feet and effect of weather which was most likely a result of underlying osteoarthritis that was found at surgery. An October 18, 2001 regular-duty assignment memorandum from the employing establishment, signed by appellant and his supervisor on October 19, 2001, noted that appellant was cleared for regular duty by his physician and advised that he had accepted the employing establishment's offer to return to his regular job.[2]

OWCP received no further medical evidence until a June 14, 2006 report was submitted by Dr. Lawrence Cooperstein, Board-certified in diagnostic radiology, who advised that appellant had a history of knee pain and stiffness. Dr. Cooperstein stated that appellant had a normal appearing reconstructed ACL and mild degenerative changes.

In a July 14, 2008 fitness-for-duty evaluation, Dr. Victoria Langa, a Board-certified orthopedic surgeon, noted the history of appellant's 2001 injury and advised that appellant related to her that he never returned to being asymptomatic after his 2001 injury. She noted that appellant sustained a knee sprain in 2006 during an unrelated work incident. Dr. Langa stated that currently appellant was experiencing circumferential right knee discomfort, pain, and stiffness that was exacerbated by walking, climbing steps, and inclines. She advised that a July 7, 2008 x-ray revealed moderate medial joint space narrowing, chondrocalcinosis both laterally and medially, and spurring of the patellofemoral articulation. Dr. Langa diagnosed degenerative joint disease (arthritis) and chondrocalcinosis. She opined that appellant's degenerative joint disease was age related and part post-traumatic in nature relating to the previous injury and resultant surgery. Dr. Langa further opined that the most recent 2006 work-related injury in part was a typical knee sprain and in part represented an exacerbation of appellant's underlying arthritis. She stated that appellant was able to work full time so long as his route consisted of a level terrain with minimal steps and inclines.

[2] Appellant initially worked light duty after his surgery.

The record was dormant after Dr. Langa's report until 2012. In a July 18, 2012 statement, appellant advised that his mail delivery route was changed to include an additional hour and a half of mail delivery in an area that included hills and uneven terrain. He noted that he was attempting to get a duty status report (Form CA-17) from his supervisor to update his work limitations. In a July 19, 2012 duty status report, Dr. Smith advised that appellant's work duties should be limited to three to four and a half hours of walking and climbing only as tolerated.

There were no further submissions to the record until 2014 when appellant submitted an April 21, 2014 MRI scan report from Dr. Justin Torok, Board-certified in diagnostic radiology, who advised that an MRI scan of the right knee revealed an intact ACL reconstruction, degeneration of the medial meniscus, degeneration involving the lateral meniscus versus a somewhat vague horizontal tear, and areas of chondrosis. Dr. Torok stated that it was unclear if the medial meniscus degeneration was from the previous tearing or partial meniscectomy.

On June 18, 2014 appellant submitted a notice of recurrence (Form CA-2a) claiming a recurrence of disability beginning July 13, 2013. He did not report stopping work. Appellant advised that in 2006 he returned to the care of Dr. Smith who diagnosed arthritis. He noted that since that time he had pain and numbness in his knees as well as back pain. From 2006 to 2012 appellant reported having trouble walking on steps, hills, and uneven ground. In July 2013, he stated that his route changed to include more walking on uneven ground causing his pain to worsen. Appellant stated that eventually he was diagnosed with a meniscus tear as a result.[3]

In a May 21, 2014 report, Dr. Smith reviewed appellant's history, noting his work injury on February 1, 2001, when he slipped on snow. He stated that this resulted in an ACL tear. Appellant underwent surgery for an ACL reconstruction and medial meniscus tear and noted that there was no abnormality of the lateral meniscus in 2001. Dr. Smith related that on October 4, 2001 appellant was released to normal activities. He further noted that in 2006 appellant had recurrent pain that began with climbing stairs at work. A June 2006 MRI scan showed a normal lateral meniscus. Dr. Smith also advised that on July 19, 2012 appellant had a flare-up of knee pain and it was determined that there was a medial narrowing calcification in both the medial and lateral meniscus. He stated that an April 2014 right knee MRI scan showed degenerative changes in the medial and lateral meniscus and a possible horizontal or degenerative type tear in the lateral meniscus. Dr. Smith opined that all the degenerative changes in appellant's right knee were degenerative in nature and not directly related to the nonwork 2006 injury. He further advised that, "in general all degenerative change in your knee can be related to some extent to your ACL ligament injury in 2001." Dr. Smith noted that ACL injuries are "generally associated with an increase in the rate of wear and degenerative arthritis of the knee."

By letter dated July 24, 2014, OWCP notified appellant that evidence was insufficient to establish his claim and advised him of the evidence needed to establish his claim. Appellant subsequently submitted a July 7, 2014 statement summarizing the history of his claims. He indicated that he was advised by the employing establishment and also by a hearing representative in his other claim, to pursue the matter as a recurrence of his accepted 2001 injury.

[3] In an accompanying June 18, 2014 statement, appellant indicated that he had filed a separate claim regarding his condition in 2006. This other claim is not before the Board on the present appeal.

By decision dated August 26, 2014, OWCP denied appellant's recurrence claim because the medical evidence was insufficient to establish that he was disabled due to a material change or worsening of the accepted work-related conditions.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening or new exposure to the work environment that caused the illness.[4]

An employee who claims a recurrence of disability due to an accepted employment injury has the burden of proof to establish by the weight of substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound reasoning.[5] Where no such rationale is present, medical evidence is of diminished value.[6]

ANALYSIS

The Board finds that appellant has not established a recurrence of disability. OWCP accepted his traumatic injury claim for right meniscus tear on April 3, 2001. Appellant was released to full duty on October 18, 2001. In 2014, he claimed entitlement to benefits and a recurrence of disability. The Board finds that there is insufficient medical evidence to establish that appellant's current condition and any disability are causally related to his work-related injury.

In his May 21, 2014 report, Dr. Smith advised that appellant underwent surgery for an ACL and medial meniscus tear in 2001. He opined that all the degenerative changes in appellant's knee were related to the ACL ligament injury in 2001. Dr. Smith noted that ACL injuries are generally associated with an increase in the rate of wear and tear of degenerative arthritis of the knee. Although he opined that appellant's current condition was causally related to the 2001 work incident, his opinion is not sufficiently rationalized. Dr. Smith merely states that ACL injuries are "generally associated" with an increased rate of wear and tear. This statement is general and is not sufficiently tailored to appellant's condition specifically. The need for rationale regarding why a degenerative condition would be due to the 2001 injury is important as OWCP has not accepted an ACL injury and also because Dr. Smith, in his October 4, 2001 report, advised that appellant's occasional aching was most likely a result of underlying osteoarthritis that was found at surgery. Thus, this more contemporaneous report

[4] 20 C.F.R. § 10.5(x); *R.S.*, 58 ECAB 362 (2007).

[5] *I.J.*, 59 ECAB 408 (2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[6] *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

seems to characterize a degenerative condition, osteoarthritis, as a condition that preexisted his 2001 surgery.

In his April 21, 2014 diagnostic report, Dr. Torok noted right knee MRI scan findings and stated that it was unclear if the medial meniscus degeneration was from the previous tearing or partial meniscectomy. He did not specifically address whether appellant's current diagnosis was causally related to his 2001 accepted condition. Thus, this report is not sufficient to establish the claim. There is no other current medical evidence addressing how appellant's current condition in causally related to his January 27, 2001 work injury.

The Board has held that a claimant who alleges that he has experienced a recurrence of an accepted condition must submit rationalized medical evidence that addresses how his current symptoms are causally related to the accepted employment injury.[7] As appellant has not submitted such evidence, the Board finds that he has not met his burden of proof.

On appeal, appellant asserts that the employing establishment advised him to claim a recurrence of his 2001 injury as Dr. Smith indicated that his condition was related to that injury. As explained, the medical evidence is not sufficient to establish causal relationship. The Board also notes that, in appellant's notice of recurrence, he attributed his worsening symptoms to a change in his route in 2012 that included more hours of mail delivery and an area with uneven terrain. Should appellant believe that new employment factors contributed to his condition, he could file an occupational disease claim.[8]

Appellant may submit new evidence or argument as part of a formal 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 did not meet his burden of proof to establish a recurrence of disability causally related to his accepted employment condition.

[7] *D.B.*, Docket No. 13-717 (issued July 24, 2013).

[8] *See* 20 C.F.R. § 10.5(q) (provides that occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift).

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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