United States Department of Labor
Employees' Compensation Appeals Board

J.A., Appellant	)	
	)	**Docket No. 14-1443**
and	)	**Issued: March 11, 2015**
	)	
U.S. POSTAL SERVICE, LAKELAND PROCESSING & DISTRIBUTION CENTER, Tampa, FL, Employer	)	

Appearances:
Lenin V. Perez, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On June 9, 2014 appellant, through his representative, filed a timely appeal of an April 10, 2014 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish an occupational knee injury.

On appeal appellant's representative argued that the reports of Dr. Samy F. Bishai, a Board-certified orthopedic surgeon, are sufficient to establish appellant's occupational disease claim.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. The relevant facts follow. On July 10, 2005 appellant, then a 49-year-old mail handler, filed a traumatic injury claim alleging that he injured his right knee putting mail in place to cut into a machine and putting it back into place. A witness stated that, while appellant was pulling a pallet-lift into position to cut mail, he grabbed his knee and stated that he heard his knee pop. Appellant underwent a right knee magnetic resonance imaging (MRI) scan which demonstrated a large posterior cyst, marked irregularity of the medial femorotibial cartilage, and marrow edema. He filed a recurrence of disability claim on February 23, 2006 and alleged that on that date he continued to experience right knee pain and swelling and required a total knee replacement. OWCP accepted appellant's claim for sprain/strain of the medial collateral ligament and tear of the lateral meniscus of the right knee on March 8, 2006. Appellant began to perform modified work on June 9, 2006.

By decision dated March 1, 2007, OWCP denied appellant's request to change physicians. Appellant requested an oral hearing before an OWCP hearing representative. By decision dated August 24, 2007, the hearing representative affirmed the denial of appellant's request to change physicians.

Appellant submitted a series of medical reports from Dr. Nathan B. Hill, Jr., a Board-certified orthopedic surgeon, who reported appellant's history of injury on July 10, 2005 pulling a wire full of magazines back in place to prepare for a machine and injuring his right knee. Dr. Hill stated that appellant had arthritis, but no pain until after the injury. He diagnosed medial joint space narrowing based on x-ray. Dr. Hill also reported osteoarthritis and degenerative meniscal tear. In a note dated March 26, 2007, he stated that appellant's right knee pain was significantly improved with almost no pain. Dr. Hill noted that appellant had prior left knee surgery. He diagnosed osteoarthritis of the right knee and found that appellant did not currently require treatment.

On January 25, 2012 appellant filed an occupational disease claim alleging that his right knee condition was ongoing; OWCP File No. xxxxxx361. He stated on December 17, 2011 that his right knee had completely locked up and he was unable to report to work. Appellant stated that his right knee was constantly aggravated by his daily work standing, pushing, pulling, twisting, lifting, and bending while in the performance of his job duties on the flat sorter machine, the first class mail break down area, and mail processing machines. He underwent an MRI scan on December 28, 2011 which demonstrated advanced degenerative arthritic changes within the right knee and small suprapatellar knee effusion. This test also demonstrated a lateral meniscal tear and truncation of the medial meniscus.

Appellant's supervisor stated that appellant reported that his knee locked up after work. Appellant stopped work on December 18, 2011.

Dr. A. Robert Massam, a Board-certified orthopedic surgeon, examined appellant on December 22 and 29, 2011. He stated that appellant twisted his right knee on Saturday and had a total locked right knee. Dr. Massam stated, "He has pain and tenderness over the medial aspect of his knee and more likely than not from this twisting injury he has a locked knee. [Appellant] probably has a bucket handle tear of his medial meniscus." After examining appellant's MRI

scan he found spur formation on both the femoral and tibial side with significant loss of articular surface and tears of the meniscus. Dr. Massam recommended surgery.

In a letter dated January 30, 2012, OWCP requested that appellant provide additional factual and medical evidence in support of his occupational disease claim. Appellant submitted a factual statement dated February 28, 2012 that he had sustained an occupational disease due to constant bending, lifting, and twisting at work. He addressed Dr. Massam's statement that he twisted his knee and stated, "I turned (twisted) my body to get out of my truck. This was 15 minutes after I left work on December 17, 2011. My right knee locked up."

Dr. Ponnavolu D. Reddy, a Board-certified orthopedic surgeon, examined appellant on February 10, 2012 and diagnosed a medial meniscus tear. He stated that appellant had experienced pain and locking in his right knee since November or December 2011. Dr. Reddy reported appellant's history of carrying bags of mail at work in November 2011 twisting his right knee and experiencing sudden pain and catching. He reported appellant's statement that he never had any problems with his right knee prior to 2011. Dr. Reddy stated that appellant had mechanical symptoms based on his MRI scan and x-rays due to medial meniscal tear. He recommended surgery. Dr. Reddy concluded, "Since he had no symptoms at all prior to the incident, it appears that carry and lifting and twisting probably caused the present symptoms."

By decision dated March 15, 2012, OWCP denied appellant's occupational disease claim finding that he failed to provide the necessary medical opinion evidence to establish that his current right knee medical condition was causally related to a work injury. Appellant requested an oral hearing from an OWCP hearing representative.

In a report dated May 16, 2012, Dr. Bishai listed appellant's date of injury as July 10, 2005. He stated on December 17, 2011 that appellant drove from the employing establishment to his daughter's house. Appellant then dismounted from his truck turning to the left and his right knee locked causing him to fall to the ground. He reported his previous right knee injury in 2005 and described his history of pushing a container to load on a flat sorter machine and experiencing a pop in his right knee joint. Dr. Bishai provided a detailed description of appellant's job duties including standing, turning, bending, lifting, and twisting. He stated that these activities caused appellant to aggravate the preexisting condition of an injury to his knee and caused him to have swelling of the joint, pain, and difficulty walking. On physical examination Dr. Bishai found slight swelling of the right knee joint, tenderness overlying the medial joint line and loss of flexion. He reviewed appellant's MRI scan and found advanced degenerative arthritic changes. Dr. Bishai diagnosed internal derangement of the right knee joint, torn medial meniscus, possible torn lateral meniscus and degenerative arthritis of the right knee joint. He stated, "To conclude, the patient's activities at work that require twisting and turning of his right knee joint and twisting the right knee joint while his foot is planted on the floor which causes a torque that causes a shearing force and causes a tear in the meniscus medial and/or lateral." Dr. Bishai opined that appellant's work duties caused him to develop the painful condition of his right knee and caused the injury to his knee on December 17, 2011 when his knee locked up and popped which was a continuation of several months of swelling and pain in the joint while performing his duties at the employing establishment.

Dr. Christopher Mordello, a Board-certified orthopedic surgeon, in a note dated May 1, 2012, stated that he referred appellant for knee surgery due to internal derangement of the right knee. He stated that appellant was totally disabled.

In a June 8, 2012 "MEMO TO THE FILE," an OWCP claims examiner related that appellant reported his right knee locked up on December 17, 2011 and he was unable to report to work. Appellant attributed this to his original employment injury of July 10, 2005. He also stated that the knee was constantly aggravated by his daily work of pushing, pulling, twisting, lifting, and bending when preparing the mail. Appellant stated that his current knee condition developed over several days and finally locked up.

Appellant submitted emergency room (ER) notes from December 17, 2011 stating that he had knee pain. He stated that on December 16, 2011 his right knee went out from under him and he was currently experiencing right knee pain. The ER physician diagnosed arthralgia, osteoarthritis pain, and ligamentous sprain, right knee. An x-ray report dated December 18, 2011 demonstrated no acute fracture in the right knee with moderate medial joint space narrowing with small medial and lateral marginal osteophytes or mild-to-moderate degenerative changes.

Appellant testified at the oral hearing on July 9, 2012. He described his initial knee injury in 2005 and stated that he did not require further treatment after 2007. Appellant described his job duties and stated that his knee began bothering him again in July 2011, when he experienced swelling and pain. He left work on December 16, 2011 and drove to his daughter's house. Appellant then turned to get out of his vehicle and his right knee locked. He stated that he was in pain before he left work on December 16, 2011 and that he had two hours of overtime that morning.

On June 19, 2012 Dr. Bishai examined appellant's right knee and again diagnosed internal derangement, torn medial meniscus, possible torn lateral meniscus, and degenerative arthritis. He opined that appellant's work activities as a mail handler resulted in his right knee symptoms. Dr. Bishai completed a report dated July 31, 2012. He stated that appellant demonstrated swelling of the right knee joint and tenderness on the medial joint line. Dr. Bishai found loss of flexion with a positive McMurray's sign and laxity of the medial collateral ligament. He stated that appellant's right knee condition had not changed. Dr. Bishai stated that appellant developed a consequential left knee injury as he was putting most of his weight on the left leg since he could not bear full weight on his right knee joint. On August 29, 2012 he reviewed the July 31, 2012 MRI scan of appellant's left knee and found severe degenerative changes of the medial meniscus. Dr. Bishai diagnosed internal derangement of the left knee and degenerative arthritis of the left knee joint.

By decision dated September 18, 2012, an OWCP hearing representative found that appellant had not met his burden of proof in establishing an occupational disease claim.

Appellant requested reconsideration on June 12, 2013. In a report dated October 2, 2012, Dr. Bishai repeated his earlier findings and recommended physical therapy. He stated that he had clearly explained how appellant's twisting and turning motions at work resulted in tears of the menisci. Dr. Bishai also stated that appellant had sustained a consequential injury to his left knee.

By decision dated July 3, 2013, OWCP denied modification of its prior decision. It found that Dr. Bishai did not explain how the locking up of appellant's right knee was related to his job duties. Appellant appealed this decision to the Board. In an order dated February 21, 2014, the Board remanded the case and directed OWCP to combine appellant's knee claims.[2]

On remand, OWCP combined File Nos. xxxxxx275 and xxxxxx361, with File No. xxxxxx275 as the master file.

By decision dated April 10, 2014, OWCP denied modification of its prior decisions finding Dr. Bishai's reports were not sufficiently detailed and well reasoned to establish his claim. It stated that Dr. Bishai did not adequately connect appellant's right knee meniscal tears with the December 17, 2011 locking incident.

LEGAL PRECEDENT

OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."[3] 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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.[4]

ANALYSIS

OWCP accepted that appellant sustained right knee injuries on July 10, 2005 consisting of sprain/strain of the medial collateral ligament and tear of the lateral meniscus. Dr. Hill diagnosed osteoarthritis of the right knee, but found that appellant did not require further treatment in 2007. Appellant filed a second claim on January 25, 2012 alleging that his employment duties aggravated his right knee condition. He stated on December 16, 2011 that, when exiting his vehicle at his daughter's house, his knee completely locked up and he was unable to report to work on December 17, 2011. Appellant stated that his knee was constantly aggravated by his daily work duties of standing, pushing, pulling, twisting, lifting, and bending.

[2] *Order Remanding Case*, Docket No. 13-1892 (issued February 21, 2014).

[3] 20 C.F.R. § 10.5(q).

[4] *Lourdes Harris*, 45 ECAB 545, 547 (1994).

Dr. Bishai diagnosed internal derangement of the right knee, degenerative arthritis, and torn menisci.

Appellant has provided medical evidence of a diagnosed condition, internal derangement and tear in the medial meniscus, a factual statement identifying the employment duties which he felt caused this condition and medical opinion evidence supporting a causal relationship between appellant's diagnosed condition and his employment duties. However, the Board finds that appellant's physicians do not provide a consistent history of injury. Dr. Mordello did not provide a clear history or an opinion on the causal relationship between appellant's condition and his work duties. He indicated that appellant's current condition was due to his July 10, 2005 work injury rather than to his implicated work duties in 2011. Dr. Massam attributed appellant's right knee condition to a single twisting injury rather than to appellant's employment duties over a period of time longer than a single work shift. Dr. Reddy indicated that appellant's knee condition was the result of carrying mail and twisting his knee in November 2011. The varying histories from Drs. Mordello, Massam, and Reddy do not support appellant's claim for an occupational disease due to a variety of work factors over a period of time. These reports are not sufficient to meet appellant's burden of proof.

Appellant also submitted several reports from Dr. Bishai beginning May 16, 2012. Dr. Bishai provided a consistent history noting appellant's 2005 work injury and the after-work locking of his right knee in December 2011. He stated that appellant drove from the employing establishment to his daughter's house and that, as he exited his truck, his right knee locked causing him to fall to the ground. Dr. Bishai provided a detailed description of appellant's job duties including standing, turning, bending, lifting, and twisting, and stated that these activities caused appellant to have swelling of the joint, pain, and difficulty walking. He diagnosed internal derangement of the right knee joint, torn medial meniscus, and degenerative arthritis of the right knee joint. Dr. Bishai stated, "To conclude, the patient's activities at work that require twisting and turning of his right knee joint and twisting the right knee joint while his foot is planted on the floor which causes a torque that causes a shearing force and causes a tear in the meniscus medial and/or lateral." He opined that appellant's work duties caused the injury to his knee on December 16, 2011 when his knee locked up as this was the culmination of months of swelling and pain in the joint while working. In his October 2, 2012 report, Dr. Bishai stated that he believed that he had clearly explained how appellant's twisting and turning motions at work resulted in tears of the menisci.

The Board finds that Dr. Bishai's reports are not sufficiently detailed and well reasoned to overcome the contradictions in the remaining medical evidence in the record and establish appellant's occupational disease claim. Dr. Bishai opined that appellant's December 16, 2011 locking incident was the culmination of his work duties and the resulting shearing force which caused the tearing of appellant's menisci. While he has provided an explanation of how appellant's work duties could have caused the meniscal tears, he has not explained why this is more likely than not the progression of appellant's osteoarthritis initially diagnosed in 2005 and his degenerative meniscal tear found by Dr. Hill in 2007. Furthermore, Dr. Bishai has not addressed the divergent histories of injury offered by appellant's other physicians variously indicating that appellant sustained a traumatic injury or a natural progression of his degenerative osteoarthritis. He also did not provide sufficient medical reasoning to explain why the December 16, 2011 incident outside of work was not the cause of appellant's condition. From

appellant's description of events, this incident would also have involved twisting and shearing forces which could have resulted in the meniscal tears. Due to these deficiencies in the medical evidence, the Board finds that appellant has not met his burden of proof in establishing an occupational disease.

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 to establish that he sustained an occupational knee injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 10, 2014 is affirmed.

Issued: March 11, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board