United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 16-0385**
	)	**Issued: April 15, 2016**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Jackson, MS, Employer	)	

Appearances:
Appellant, pro se
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 December 23, 2015 appellant filed a timely appeal from a November 10, 2015 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.

ISSUE

The issue is whether appellant met his burden of proof to establish a bilateral knee condition in the performance of duty causally related to factors of his federal employment.

FACTUAL HISTORY

On August 17, 2015 appellant, a 65-year-old housekeeping aid, filed an occupational disease claim (Form CA-2), alleging that he developed a bilateral knee condition as a result of repetitive bending, walking, lifting laundry and trash bags, buffing floors, mopping, and standing

[1] 5 U.S.C. § 8101 *et seq.*

in the performance of duty. He indicated that he first became aware of the condition and its relation to his federal employment on April 26, 2013. Appellant did not stop work.

In an August 27, 2015 letter, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted an August 31, 2015 narrative statement indicating that he had worked full time since April 26, 2008 and his duties required repetitively cleaning high areas, bending for long periods of time, cleaning low and tight areas, cleaning stairways and multiple areas quickly, handling powered equipment and lifting heavy items, such as tables, chairs, and desks. He also submitted a medical restrictions statement dated August 24, 2015 from an unidentifiable healthcare provider.

In reports dated November 26, 2008 through February 18, 2009, Dr. Lane Laken, a Board-certified orthopedic surgeon, diagnosed bilateral knee pain secondary to moderate-to-moderately advanced arthrosis. In an August 13, 2008 report, he diagnosed bilateral osteoarthritis in the knees. In progress reports dated June 24, 2009 through May 26, 2010, Dr. Laken reported that appellant had undergone knee injections that helped him moderately, but stated that overall he was about the same. On September 1, 2010 Dr. Laken found that appellant's condition remained stable and examination remained unchanged. He asserted that appellant was not interested in repeat injections and was considering total knee replacement. On January 17, 2012 appellant indicated that he was not ready for total knee arthroplasty. In a December 4, 2014 report, Dr. Laken diagnosed advanced arthrosis of both knees and asserted that appellant worked at the employing establishment.

On August 24, 2015 Dr. J.B. Franklin, a physician from the employing establishment's health clinic, asserted that appellant was having difficulty carrying out his assigned duties as a housekeeper due to extreme bilateral knee and joint pain and requested light-duty work due to. Appellant related that his duties included buffing, sweeping, vacuuming floors, cleaning rooms, making beds, shampooing carpet, waxing floors, pushing trash carts, and lifting heavy trash bags. He further indicated that he was awaiting knee surgery. Dr. Franklin noted that appellant wore a soft and a hard knee brace on both knees and advised that light duty should be allowed in order to help him reduce the pain in his lower extremities.

Appellant further submitted an April 28, 2009 consultation note from Dr. Susan Yeager, a podiatric surgeon, who indicated that no changes were made to his medication regimen.

In an October 7, 2015 letter, the employing establishment controverted appellant's claim because there was no physician opinion as to whether his condition was work related and how his condition was causally related to his employment.

By decision dated November 10, 2015, OWCP found that the medical evidence of record was insufficient to establish a causal relationship between appellant's diagnosed conditions and factors of his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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 timely filed within the applicable time limitation period of FECA, and that an injury[3] was sustained in the performance of duty. These are the essential elements of each 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 a claim for an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[5]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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.[6]

ANALYSIS

The Board finds that appellant failed to establish a bilateral knee condition in the performance of duty. The medical evidence appellant submitted fails to establish that federal employment factors caused or aggravated his bilateral knee condition. Appellant submitted a statement in which he identified the factors of employment that he believed caused the condition, including repetitive bending, walking, standing, lifting, cleaning, mopping, and buffing floors, which OWCP accepted as factual. However, to establish a claim that he sustained an employment-related injury, he must also submit rationalized medical evidence which explains how his medical condition was caused or aggravated by the implicated employment factors.[7]

In his reports, Dr. Laken diagnosed bilateral osteoarthritis and advanced arthrosis of the knees and asserted that appellant worked at the employing establishment. He failed to provide a

[2] *Id*.

[3] OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

[4] *See O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

[5] *See D.R.*, Docket No. 09-1723 (issued May 20, 2010). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] *See O.W.*, *supra* note 4.

[7] *See A.C.*, Docket No. 08-1453 (issued November 18, 2008).

rationalized opinion explaining how factors of appellant's federal employment, such as repetitive bending, walking, standing, lifting, cleaning, mopping, and buffing floors, caused or aggravated his bilateral knee. Dr. Laken noted that appellant's condition occurred while he was at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the diagnosed conditions.[8] The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between appellant's condition and his employment factors.[9] Lacking thorough medical rationale on the issue of causal relationship, the Board finds that Dr. Laken's reports are insufficient to establish that appellant sustained an employment-related injury.

In his August 24, 2015 report, Dr. Franklin asserted that appellant was having difficulty carrying out his assigned duties as a housekeeper due to extreme bilateral knee pain and advised that light duty should be allowed in order to help him reduce the pain in his lower extremities. The Board finds that Dr. Franklin's diagnosis of bilateral knee pain is a description of a symptom rather than a clear diagnosis of the medical condition.[10] Moreover, the Board has held, as noted above, that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between appellant's condition and his employment factors.[11] Therefore, the Board finds that Dr. Franklin's report is insufficient to establish that appellant sustained an employment-related injury.

The April 28, 2009 consultation note from Dr. Yeager is of limited probative medical value as it does not specifically address whether factors of appellant's federal employment caused or contributed to the diagnosed conditions.[12]

Appellant also submitted a medical restrictions statement dated August 24, 2015 in support of his claim. However, this document is from a healthcare provider whose identity cannot be discerned from the record. Because it cannot be determined whether this record is from a physician as defined in 5 U.S.C. § 8101(2), it does not constitute competent medical evidence.[13]

[8] *See K.W.*, Docket No. 10-98 (issued September 10, 2010).

[9] *See Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[10] *Id.*

[11] *See Richard B. Cissel*, *supra* note 9; *William Nimitz, Jr.*, *supra* note 9.

[12] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (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).

[13] *R.M.*, 59 ECAB 690, 693 (2008). *See C.B.*, Docket No. 09-2027 (issued May 12, 2010) (a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and reports lacking proper identification do not constitute probative medical evidence).

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to the accepted employment factors, he failed to meet his burden of proof to establish a claim.

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 not met his burden of proof to establish that he developed a bilateral knee condition in the performance of duty causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the November 10, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2016
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