United States Department of Labor
Employees' Compensation Appeals Board

G.G., Appellant	)	
and	)	**Docket No. 16-0007**
	)	**Issued: February 12, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Plainview, NY, Employer	)	

Appearances:
Thomas S. Harkins, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 1, 2015 appellant, through counsel, filed a timely appeal from a September 2, 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 has met his burden of proof to establish an injury causally related to a July 28, 2015 employment incident.

FACTUAL HISTORY

On August 5, 2014 appellant, then a 58-year-old city carrier assistant, filed a recurrence of disability claim (Form CA-2a). He alleged that he sustained a recurrence of a March 18, 2014

[1] 5 U.S.C. § 8101 *et seq.*

injury to his right knee (OWCP File No. xxxxxx796) while delivering mail that caused him to stop work on July 28, 2014 when his knee tightened up.

In a July 1, 2014 report, Dr. Andrew Rosen, a Board-certified orthopedic surgeon, advised that appellant was eight weeks post right knee arthroscopy. He noted that appellant related that his pain had improved, but there was mild pain with climbing stairs. Dr. Rosen advised that appellant would return to work on July 14, 2014. On July 29, 2014 he noted that appellant continued to have discomfort with full flexion and intermittent swelling. Dr. Rosen indicated that appellant had returned to work, but had significant pain performing his job duties and walked with a limp. On examination of the right knee, he noted well-healed wounds, trace effusion, mild diffuse tenderness, and positive pain with flexion. In an accompanying July 29, 2014 disability status report, Dr. Rosen's office advised that appellant underwent an arthroscopic surgery on May 21, 2014. OWCP noted that appellant could return to work on August 29, 2014. Physical therapy reports were also submitted.

In an August 26, 2014 report, Dr. Rosen advised that appellant was still experiencing right knee pain. He noted that there was continued discomfort and intermittent swelling. Appellant explained to Dr. Rosen that he was unable to walk and tolerate standing and, therefore, was unable to work. Examination of the right knee revealed well-healed wounds, trace effusion, mild diffuse tenderness, and positive pain with flexion. Dr. Rosen assessed persistent inflammatory change post knee arthroscopy.

By letter dated September 8, 2014, OWCP advised appellant that it was developing the matter as a new claim for a traumatic injury sustained on July 28, 2014. It advised him of the type of evidence needed to establish his claim. OWCP allowed appellant 30 days from the date of the letter to submit responsive evidence.

In a September 4, 2014 diagnostic report, Dr. Amy Liebeskind, a Board-certified diagnostic radiologist, advised that the right knee magnetic resonance imaging (MRI) scan revealed post partial medial meniscectomy without evidence of recurrent tear, subchondral insufficiency fracture/spontaneous osteonecrosis at the medial femoral condyle, and moderate joint effusion.

By decision dated October 10, 2014, OWCP denied appellant's claim because medical evidence failed to establish a diagnosed medical condition in connection with the accepted work incident.

Thereafter, appellant submitted additional evidence. In a September 11, 2014 report, Dr. Rosen advised that appellant continued to complain of right knee pain. He reiterated the results of the right knee MRI scan and assessed medial femoral condyle osteonecrosis of the knee with osteochondral defect. On November 21, 2014 appellant advised Dr. Rosen that his symptoms had improved with the use of a brace, but he continued to have pain upon ambulation. On examination Dr. Rosen noted mild medial tenderness and assessed persistent pain post knee arthroscopy with medial femoral condyle osteonecrosis. In a December 30, 2014 report, he advised that appellant's symptoms persisted. Dr. Rosen noted that the medial unloading knee bracing improved pain, but he still walked with a substantial limp without the brace. He assessed persistent knee pain and increasing osteonecrosis.

In a January 13, 2015 report, Dr. Rosen noted a history of a twisting right knee injury on March 18, 2014. He noted that, after imaging revealed a complex tear of the posterior horn of the medical meniscus, appellant underwent knee arthroscopy. Dr. Rosen indicated that appellant was healing well and released him to work on July 14, 2014. He further noted that appellant related a worsening of symptoms and difficulty walking and standing, which made him unable to perform his job duties. Dr. Rosen assessed right knee medial meniscal tear, post knee arthroscopy, and medial femoral condyle osteonecrosis with osteochondral fragment. He opined that the injuries matched the mode of injury as described, which was a twisting injury walking down stairs. Dr. Rosen further opined that the initial injury directly caused the meniscal tear and that the osteonecrosis, which was not seen on the first MRI scan, also developed subsequent to the initial trauma.

Dr. Rosen, in a March 10, 2015 report, advised that appellant's symptoms had improved, but he still had pain with weight bearing and required the use of the brace. He noted that there was right knee mild medial tenderness and assessed right knee femoral osteonecrosis clinically with some improvement. In an April 21, 2015 duty status report (Form CA-17), Dr. Rosen advised that appellant was totally disabled.

On June 11, 2015 appellant, through counsel, requested reconsideration, contending that an employment-related injury occurred on July 28, 2014.

By decision dated September 2, 2015, OWCP found that the evidence was not sufficient to establish that the diagnosed condition was causally related to the work incident.

Counsel argues on appeal that the medical evidence did establish that appellant's work stoppage was causally related to injuries and conditions sustained as a result of his federal employment.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[2] including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.[3] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at

[2] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[3] *R.C.*, 59 ECAB 427 (2008).

[4] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[5]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.[6]

ANALYSIS

There is no dispute that on July 28, 2014 appellant was delivering mail. Therefore, the first component of fact of injury, the incident, is established. However, the Board finds that the medical evidence is insufficient to establish that the employment incident on July 28, 2014 caused or aggravated appellant's diagnosed condition.

In his January 13, 2015 report, Dr. Rosen advised that appellant first had a twisting right knee injury on March 18, 2014. He indicated that after appellant returned to work he related a worsening of symptoms and difficulty walking and standing which made him unable to perform his job duties. Dr. Rosen assessed right knee medial meniscal tear, post knee arthroscopy, and medial femoral condyle osteonecrosis with osteochondral fragment. This report is insufficient to establish causal relationship because Dr. Rosen did not address whether the July 28, 2014 work incident caused appellant's diagnosed condition. Instead Dr. Rosen opined that the initial twisting injury directly caused the meniscal tear and the osteonecrosis. He indicates that appellant's condition is related to the initial March 18, 2014 employment-related twisting injury, which is not presently before the Board. Furthermore, Dr. Rosen did not offer any explanation as to how the July 28, 2014 work incident caused or aggravated an injury. In his July 29, 2014 report, he advised that appellant had significant pain performing his job duties and walked with a limp after he returned to work. However, Dr. Rosen failed to specifically explain how appellant's duties upon his return to work caused or aggravated his diagnosed condition. His other reports are also insufficient to discharge appellant's burden of proof as they do not address causal relationship between the July 28, 2014 work incident and the claimed condition. The Board has held that medical opinions that do not state an opinion on causal relationship are of little probative value.[7]

Likewise, diagnostic and disability status reports are insufficient to discharge appellant's burden of proof as they do not address causal relationship.[8] Appellant also submitted physical therapy reports. However, this is not considered probative medical evidence as physical

[5] *T.H.*, 59 ECAB 388 (2008).

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

[7] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[8] *Id.*

therapists are not considered physicians as defined under FECA.[9] Thus, physical therapy reports are insufficient to establish the claim.

On appeal, appellant's counsel asserts that the medical evidence did establish that appellant's work stoppage on July 28, 2014 was causally related to his federal employment regardless of whether OWCP treated it as a new injury or as causally related to his accepted March 18, 2014 injury. As explained, the medical evidence is insufficient to establish the claim as appellant has not provided a physician's report explaining how his duties on July 28, 2014 caused or aggravated his diagnosed conditions. Causal relationship is a medical question that must be established by probative medical opinion from a physician.[10] Because appellant has not provided such medical opinion evidence in this case, he has failed to meet his burden of proof with respect to a new injury on July 28, 2014.

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 in establishing an injury causally related to a July 28, 2014 employment incident.

[9] Under FECA, a "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). *See Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

[10] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008).

ORDER

IT IS HEREBY ORDERED THAT the September 2, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 12, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board