United States Department of Labor
Employees' Compensation Appeals Board

A.D., Appellant	)	
and	)	**Docket No. 17-0550**
	)	**Issued: July 7, 2017**
U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 10, 2017 appellant filed a timely appeal from a November 23, 2016 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 an injury in the performance of duty on June 24, 2016, as alleged.

FACTUAL HISTORY

On September 30, 2016 appellant, then a 46-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 24, 2016 he sustained a right knee injury when a dog

[1] 5 U.S.C. § 8101 *et seq.*

chased him after a delivery, he hit his knee on a fence, and he flipped over the fence. He stopped work.

In a work excuse slip dated August 8, 2016, Dr. Kenneth Tuan, Board-certified in orthopedic surgery, noted that appellant could return to work on September 15, 2016 with restrictions of no climbing of stairs or ladders, no kneeling or squatting, no prolonged walking or standing, no lifting over five pounds, and sedentary work only. In an undated work excuse slip, He noted that from September 19 through October 18, 2016, appellant should work four hours per day.

By letter dated October 17, 2016, OWCP informed appellant of the evidence it needed to establish his claim, including additional factual and medical information regarding the circumstances of the injury on June 24, 2016. It also asked him to provide statements from witnesses to the incident. Appellant was afforded 30 days to submit the necessary evidence.

On October 20, 2016 the employing establishment continued appellant's claim. It argued that he failed to report his claimed injury as work related in a timely fashion, as he was off work for two months prior to the injury. The employing establishment questioned why an employee would wait 11 days to report an injury and alleged that it believed he injured his knee outside of work.

In a report dated July 27, 2016, Dr. Tuan noted that appellant first noticed pain in his knee on May 27, 2016, when he was walking at work and his knees buckled and popped. He further stated that on June 24, 2016 appellant was delivering mail when a dog chased him and he ran into a fence with his right knee. Dr. Tuan assessed appellant with right knee pain.

On August 16, 2016 Dr. Mark A. Muscato, Board-certified in diagnostic radiology, reviewed a magnetic resonance imaging (MRI) scan of appellant's right knee, stating impressions of degenerative changes at the patellofemoral joint; a mild increased signal within the anterior cruciate ligament that could relate to an acute or chronic strain injury; an increased signal within the posterior horn of the medial meniscus, equivocal for a tear; and fluid adjacent the patellar tendon insertion on the tibial tuberosity.

On October 17, 2016 Dr. Tuan examined appellant and provided a diagnosis of right patellar chondromalacia with painful crepitus.

In an attending physician's report (Form CA-20) dated October 27, 2016, Dr. Tuan again diagnosed appellant with right patellar chondromalacia. He checked a box marked "yes" affirming that he believed the condition was caused or aggravated by the incident of June 24, 2016.

On October 19, 2016 Dr. Tuan recommended that appellant not return to work until October 24, 2016.

By decision dated November 23, 2016, OWCP denied appellant's claim for compensation. It found that because the medical evidence noted that appellant had first noticed pain on May 27, 2016, before the alleged incident of June 24, 2016, appellant had not established

the factual component of fact of injury. Additionally, it found that appellant did not establish "that an event … caused the condition diagnosed and it[s] connection with the injury or event."

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish 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[3] was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. First, the employee must submit evidence sufficient to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition relates to the employment incident.[5]

With respect to the first component of fact of injury, the employee has the burden of proof to establish the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.[6] An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[7] An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[8] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in

[2] 5 U.S.C. §§ 8101 *et seq.*

[3] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[4] *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Id*. *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

[6] *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

[7] *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

[8] *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

determining whether a *prima facie* case has been established.[9] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[10]

The claimant has the burden of proof to establish by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[11] An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[12]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[13] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and compensable employment factors.[14] 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.[15]

ANALYSIS

The Board finds that appellant has established that the incident of June 24, 2016 occurred as alleged. The Board also finds that appellant has established a medical diagnosis related to his claimed injury. However, appellant did not meet his burden of proof to establish causal relationship between the claimed injury and the incident of June 24, 2016.

In his initial claim, appellant described the incident resulting in injury as a dog chasing him after a delivery, causing him to hit his knee on a fence, and flip over the fence. As noted above, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[16]

[9] *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

[10] *D.B.*, 58 ECAB 464, 466-67 (2007); *Robert A. Gregory*, 40 ECAB 478, 483 (1989).

[11] *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[12] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[13] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

[14] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

[15] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[16] *Supra* note 10.

In a subsequent medical report, dated July 27, 2016, Dr. Tuan noted that appellant first noticed pain in his knee on May 27, 2016, when he was walking at work and his knees buckled and popped. The fact that appellant may have noticed pain in his knee prior to June 24, 2016 does not cast sufficient doubt on his account of the incident on that date to render it refuted by strong or persuasive evidence. Similarly, while the employing establishment contended that the claim should be denied because appellant waited 11 days to inform them, 11 days is not a sufficiently long period of time to qualify as "strong or persuasive evidence" that appellant's account of events is insufficient to establish his claim. As such, appellant's account of the events of June 24, 2016 are of great probative value and sufficient to establish that the incident occurred as alleged.

Furthermore, appellant submitted evidence sufficient to establish that he was diagnosed with a condition related to his claimed right knee injury. In several reports, Dr. Tuan diagnosed appellant with right patellar chondromalacia.

However, the Board finds that appellant did not submit evidence sufficient to establish causal relationship between his diagnosed right knee condition and the June 24, 2016 incident. Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically-sound explanation of how the work incident caused or aggravated the claimed condition.[17] There are no medical reports of record containing a rationalized opinion as to how the incident of June 24, 2016 caused or aggravated appellant's claimed condition. In his report dated October 27, 2016, Dr. Tuan checked a box marked "yes" indicating that the diagnosed condition was causally related to the employment incident. The Board has held that a report that addresses causal relationship with a check mark, without medical rationale explaining how the work factors caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship.[18] Moreover, none of Dr. Tuan's medical reports discuss the significance of appellant's preexisting right knee pain as it relates to the claimed right knee injury of June 24, 2016.[19]

OWCP also received a report from Dr. Muscato dated August 16, 2016 in which he reviewed appellant's MRI scan and provided diagnoses for appellant's right knee condition. Diagnostic test reports, however, are of limited probative value if they fail to provide an opinion on causal relationship between the diagnosed condition and the employment incident.[20]

For these reasons, the Board finds that the evidence of record is insufficient to meet appellant's burden of proof. Lacking such opinions and well-rationalized explanation, appellant has not submitted sufficient evidence to establish a causal relationship between the accepted employment incident of June 24, 2016 and his diagnosed right knee condition. As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an

[17] *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

[18] *See S.C.*, Docket No. 17-0103 (issued May 2, 2017).

[19] *See D.A.*, Docket No. 10-2075 (issued June 22, 2011).

[20] *See D.H.*, Docket No. 17-0178 (issued May 10, 2017).

injury causally related to duties of his employment on June 24, 2016, he has not met his burden of proof.

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 a right knee condition causally related to the accepted June 24, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 23, 2016 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: July 7, 2017
Washington, DC

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

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

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