United States Department of Labor
Employees' Compensation Appeals Board

I.V., Appellant	)	
and	)	**Docket No. 17-0610**
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS & BORDER PROTECTION, Norfolk, VA, Employer	)	**Issued: May 25, 2017**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 18, 2017 appellant filed a timely appeal from a September 7, 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 to consider the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish a recurrence of medical condition on May 20, 2016 causally related to his April 28, 2010 employment injury.

FACTUAL HISTORY

On May 30, 2010 appellant, then a 39-year-old customs and border protection officer, filed a traumatic injury claim (Form CA-1), and alleged that on April 28, 2010, while conducting

[1] 5 U.S.C. § 8101 *et seq.*

a search on a vessel, he stepped on a slippery pipe and twisted his right knee which caused sharp pain. Appellant stopped work on April 28, 2010 and returned to light-duty work on May 3, 2010. OWCP accepted torn medial meniscus of the right knee and authorized arthroscopic surgery which was performed on June 11, 2010.

On July 20, 2016 appellant filed a claim for recurrence of medical condition (Form CA-2a), alleging that he experienced a recurrence of right knee pain on May 20, 2016 causally related to his accepted April 28, 2010 employment injury. He thought the right knee pain would diminish, but it continued in the same pattern and localized in the same area as the original injury. Appellant's supervisor noted on the claim form that appellant did not stop work after filing his recurrence claim. She indicated that appellant sustained a nonwork-related lower back injury in February 2012 for which he underwent surgery on February 10, 2012. Appellant returned to light-duty status on February 27, 2012 and full duty on March 24, 2012.

Appellant submitted a June 22, 2016 report from Dr. Michael Romash, a Board-certified orthopedist, who treated him for right medial knee pain and mild left hip pain. Dr. Romash noted appellant's history was significant for right knee arthroscopy in 2010. Appellant reported an injury occurring a month earlier with a sudden onset; however, he did not remember the cause of the injury. He noted symptoms included medial right knee pain with stairs, locking, popping, and joint stiffness. Dr. Romash noted findings on examination of mildly antalgic gait on the right, varus with lateral thrust in midstance, tenderness of meniscal joint ligament, mild patellofemoral crepitance, limited range of motion of the left hip, and no internal rotation. He noted x-rays of the right knee revealed narrowing of the medial joint line. Dr. Romash noted an x-ray of the hip revealed a shallow acetabula and a very narrow hip joint on the left. He diagnosed medial arthritis and indicated this condition was a consequence of the injury to the meniscus, which required a meniscectomy. Dr. Romash also diagnosed right knee pain, developmental hip dysplasia, and degenerative arthritis of the knee.

By letter dated July 27, 2016, OWCP advised appellant that it required additional factual and medical evidence, including a comprehensive medical report, to support that his claim for medical treatment as of May 20, 2016 was causally related to his accepted right knee employment injury.

Appellant submitted a statement dated August 21, 2016 and indicated that he believed his current right knee pain was related to the original injury because the pain occurred in the same pattern and was localized in the same area as the April 28, 2010 employment injury. He stated that the pain recurred in May 2016 and he thought it would resolve with rest; however, the pain persisted. Appellant reported undergoing back surgery in February 2012. His activities included biking daily.

An August 3, 2016 report from Dr. Romash, who treated him for right knee pain, noted a medial meniscus tear while on the job in 2010 and underwent a right knee arthroscopy and partial medial meniscectomy. Appellant noted some relief after surgery, but noted developing severe right medial knee pain which was limiting his ability to perform activities of daily living. He reported medial right knee pain, moderate in severity, intermittent, sharp, and stabbing which was relieved with rest. Appellant noted symptoms included pain with stairs, locking, popping,

and joint stiffness. Dr. Romash noted the examination revealed a gait marked by mild varus with lateral thrust in midstance, tenderness of meniscal joint ligament, and mild patellofemoral crepitance. He noted that x-rays revealed varus knee, decreased medial joint space, and narrowing of the medial joint line. Dr. Romash diagnosed medial compartment knee arthritis marked by narrowing of the joint space on x-ray, right knee pain, and degenerative arthritis of the knee. He opined that this was related to the injury and surgery six years ago where part of the medial meniscus was removed, altering the pressure distribution in the medial compartment of the knee which caused arthritic change. Dr. Romash recommended a right knee MRI scan. Attached were duplicate copies of Dr. Romash's reports dated June 22 and August 3, 2016.

By decision dated September 7, 2016, OWCP denied appellants claim for a recurrence of medical condition.

LEGAL PRECEDENT

A claimant seeking compensation under FECA[2] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.[3] In this case, appellant has the burden of proof to establish that he sustained a recurrence of a medical condition causally related to his accepted traumatic injury. This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the accepted conditions and supports that conclusion with sound medical rationale.[4] Where medical rationale in support of the physician's opinion is not present, the medical evidence is of diminished probative value.[5]

OWCP regulations define a recurrence of medical condition as a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment.[6] In order to establish that his or her claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between his or her present condition and the accepted conditions must support the physician's

[2] 5 U.S.C. § 8101 *et seq*.

[3] *Mary A. Ceglia*, 55 ECAB 626 (2004).

[4] *Jimmie H. Duckett,* 52 ECAB 332 (2001); *Franklin D. Haislah,* 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Frank Luis Rembisz,* 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[5] *Id*.

[6] 20 C.F.R. § 10.5(y).

conclusion of a causal relationship.[7] An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on an appellant's unsupported belief of causal relation.[8]

ANALYSIS

OWCP accepted appellant's claim for torn medial meniscus of the right knee. Appellant was released to full duty on June 29, 2010. On July 20, 2016 he filed a claim for a recurrence alleging that on May 20, 2016 he had a recurrence of right knee pain causally related to his accepted April 28, 2010 employment injury. Appellant did not stop work. The Board finds that the medical record lacks a well-reasoned narrative from appellant's physicians relating his claimed recurrent condition beginning May 20, 2016 to his accepted employment injury.

In support of his claim, appellant submitted the June 22, 2016 report from Dr. Romash who treated him for right medial knee pain and mild left hip pain. Dr. Romash noted appellant's right knee arthroscopy in 2010, but advised that appellant reported an injury occurring a month earlier with a sudden onset, but that he did not remember the cause of the injury. He noted appellant's symptoms and reported that x-rays revealed narrowing of the medial joint line. Dr. Romash diagnosed medial arthritis and opined that this condition should be considered a consequence of the injury to the meniscus requiring a meniscectomy.

In the August 3, 2016 report, Dr. Romash reported that appellant sustained a medial meniscus tear while on the job in 2010 and underwent a right knee arthroscopy and partial medial meniscectomy. Appellant noted some relief after surgery but developed severe right medial knee pain which was limiting his ability to perform activities of daily living. Dr. Romash diagnosed medial compartment knee arthritis, right knee pain, and degenerative arthritis of the knee. He opined that this condition was related to the prior work injury and surgery, where part of the medial meniscus was removed, altering the pressure distribution in the medial compartment of the knee which caused arthritic change. However, Dr. Romash's opinion regarding causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.[9] He did not specifically explain how appellant sustained a recurrence of medical condition on May 20, 2016 causally related to the accepted employment condition or otherwise provide medical reasoning explaining why any current condition was due to the employment injury. While Dr. Romash noted increased symptoms, he did not provide medical reasoning explaining why appellant's current diagnosed medial compartment knee arthritis and right knee degenerative arthritis were causally related to the accepted April 28, 2010 employment injury.[10] The Board also notes that OWCP has not accepted medial compartment knee arthritis and right knee degenerative arthritis as work

[7] *Supra* note 3.

[8] *Ausberto Guzman*, 25 ECAB 362 (1974).

[9] *William C. Thomas*, 45 ECAB 591 (1994); *see T.M.*, Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[10] *See Jimmie H. Duckett, supra* note 4.

related.[11] Where a claimant claims that a condition not accepted or approved by OWCP was due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.

Consequently, the medical evidence is insufficient to establish a recurrence of appellant's medical condition.

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 recurrence of medical condition on May 20, 2016 causally related to his April 28, 2010 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 7, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 25, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

[11] *See T.M.*, *supra* note 9.