United States Department of Labor
Employees' Compensation Appeals Board

D.E. Appellant	)	
and	)	**Docket No. 17-1874**
	)	**Issued: February 9, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Louisville, KY, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 5, 2017 appellant filed a timely appeal from a March 23, 2017 merit decision of the Office of Workers' Compensation Programs[1] (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 right knee meniscal tear causally related to the accepted October 9, 2015 employment incident.

[1] Appellant also filed a timely request for oral argument in this case. By order dated December 18, 2017 the Board, after exercising its discretion, denied appellant's request for oral argument as oral argument would further delay issuance of a Board decision and not serve a useful purpose. *Order Denying Request for Oral Argument,* Docket No. 17-1874 (issued December 18, 2017).

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 13, 2015 appellant, then a 44-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 9, 2015, he sustained a right knee injury when he stepped off a curb while in the performance of duty and felt his knee pop. He stopped work on October 13, 2015.

In an October 14, 2015 diagnostic report, Dr. Tim Averion-Mahloch, a Board-certified diagnostic radiologist, reported that an x-ray of appellant's right knee revealed mild osteoarthritic changes.

In an October 14, 2015 medical report, Dr. David Dome, a Board-certified orthopedic surgeon, noted that he had previously treated appellant for a left knee injury which had resolved. He reported that, five days ago while at work, appellant stepped off a curb and twisted his right knee, experiencing immediate onset of pain after a painful pop of the medial knee. Appellant denied any right knee difficulty in the past. He returned to work the following day, but subsequently could not continue working due to pain. Dr. Dome noted that x-rays revealed some minimal degenerative changes of the patellofemoral joint. He reported findings of medial meniscal tear following a recent twisting injury at work. Dr. Dome recommended a magnetic resonance imaging (MRI) scan of the right knee to evaluate the medial meniscus.

Dr. Dome reported on October 21, 2015 that appellant returned for follow up of a work-related injury to the right knee. He reported that appellant sustained a recent twisting injury to the right knee with physical findings consistent with medial meniscal tear. Dr. Dome restricted appellant from work and noted that he was awaiting approval of an MRI scan of the right knee. Duty status reports (Form CA-17) dated October 14 and 21, 2015 restricted appellant from work.

By letter dated November 2, 2015, OWCP notified appellant that his claim was initially administratively handled to allow medical payments, as it appeared to involve a minor injury resulting in minimal or no lost time from work. However, the merits of appellant's claim had not been formally considered and his claim had been reopened for consideration of the merits because he had not returned to work. OWCP informed him that the evidence of record was insufficient to establish his traumatic injury claim. Appellant was advised of the type of medical and factual evidence needed and afforded 30 days to submit the additional evidence.

In CA-17 forms dated November 5 and 30, 2015, Dr. Dome restricted appellant from returning to work due to a meniscus tear of the right knee.

By decision dated December 7, 2015, OWCP denied appellant's claim finding that the evidence of record failed to establish that his diagnosed condition was causally related to the accepted October 9, 2015 employment incident.

On December 21, 2015 appellant requested an oral hearing before an OWCP hearing representative.

In a November 3, 2015 diagnostic report, Dr. Averion-Mahloch reported that an MRI scan of appellant's right knee revealed a horizontal tear of the posterior horn and mid portion of the medial meniscus with a large adjacent perimeniscal cyst, a small osteochondral fracture along

the medial margin of the medial femoral condyle, mild degenerative changes, and moderate joint effusion.

In a November 4, 2015 medical report, Dr. Dome reported that an MRI scan of the right knee revealed a complex tear of the medial meniscus with an associated subchondral injury to the far medial edge of the medial femoral condyle. He also noted some subchondral edema of the patella. Dr. Dome diagnosed status post twisting injury to the knee with complex tear of the medial meniscus and an associated subchondral edema. He recommended that appellant undergo arthroscopy of the right knee.

In a March 7, 2016 medical report, Dr. Dome reported that appellant returned for follow up after his arthroscopic partial medial meniscectomy of the right knee. He noted that appellant was doing well postsurgery and had reached maximum medical improvement. Dr. Dome diagnosed status post arthroscopic partial medial meniscectomy of the right knee following a work-related injury.

In a March 7, 2016 diagnostic report, Dr. John West, a Board-certified diagnostic radiologist, reported that an x-ray of the right knee revealed mild bilateral degenerative joint disease.

A hearing was held on August 9, 2016 at which appellant testified in support of his claim and described the circumstances surrounding his right knee injury. He reported that he underwent surgery in November 2015 and was back at work in February 2016.

Following the hearing, appellant submitted medical reports dated October 14 through November 30, 2015. In a November 10, 2015 operative report, Dr. Dome reported that appellant underwent surgery for a medial meniscal tear of the right knee. He provided findings pertaining to the arthroscopic partial medial meniscectomy of the right knee. In November 18 and 30, 2015 reports, Dr. Dome related that appellant complained of persistent pain post arthroscopic partial meniscectomy of the right knee.

By decision dated September 30, 2016, an OWCP hearing representative affirmed the December 7, 2015 decision, finding that the evidence of record failed to establish that appellant's diagnosed condition was causally related to the accepted October 9, 2015 employment incident.[3] The hearing representative noted that the reports of Dr. Dome failed to discuss appellant's prior right knee injury and therefore did not reflect a complete and accurate factual and medical background.

On January 12, 2017 appellant requested reconsideration.

In support of his claim appellant submitted a November 29, 2016 narrative report from Dr. Dome. In his report, Dr. Dome reported that he was in receipt of OWCP's denial letter

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[3] The hearing representative noted that appellant had a prior workers' compensation claim for an April 8, 2010 right knee injury when he stepped out of his car and his knee popped. The claim was assigned OWCP File No. xxxxxx943. OWCP allowed payment of limited medical expenses without formal adjudication of the claim. The record before the Board contains no other information pertaining to appellant's prior claim.

regarding appellant's claim. He explained that he evaluated appellant on October 14, 2015 for an acute traumatic injury to the right knee when he twisted his knee while he stepped off a curb at work on October 9, 2015. Dr. Dome reported a prior history of a knee sprain in April 2010 which resolved with conservative treatment. He noted that appellant's right knee was asymptomatic from May 2010 until his right knee injury in October 2015. Dr. Dome noted that there were no imaging studies performed in 2010 to confirm the absence of meniscal pathology. However, if appellant had a preexisting injury to the right knee in 2010, the injury was quiescent and asymptomatic until he sustained an acute traumatic twisting injury to the right knee in October 2015. Dr. Dome reported that appellant's history and physical findings on initial evaluation were consistent with acute traumatic injury to the medial meniscus of the right knee which was confirmed with a right knee MRI scan. Appellant subsequently underwent arthroscopy of the right knee on November 10, 2015 with intraoperative findings of no significant degenerative changes of the medial compartment of the right knee. Dr. Dome noted that appellant did have a large parrot beak flap of the medial meniscus consistent with an acute twisting injury to the knee. He concluded that appellant subsequently went on to have an uneventful recovery with resolution of his acute mechanical complaints of the right knee following his October 9, 2015 injury.

By decision dated March 23, 2017, OWCP denied modification of the September 30, 2016 decision finding that the evidence of record failed to establish that his right knee medial meniscus tear was causally related to the accepted October 9, 2015 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[6]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[7] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

[4] *Supra* note 2.

[5] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[6] *Michael E. Smith*, 50 ECAB 313 (1999).

[7] *Elaine Pendleton*, *supra* note 5 at 1143.

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.[8] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[9]

ANALYSIS

OWCP accepted that on October 9, 2015 appellant stepped off a curb while delivering mail and felt his right knee pop.

The issue is whether appellant established that the accepted employment incident caused his right knee medial meniscus tear. The Board finds that he has not submitted sufficient medical evidence to establish that his right knee condition is causally related to the October 9, 2015 employment incident.[10]

In medical reports dated October 14, 2015 through November 29, 2016, Dr. Dome reported that appellant was evaluated for an acute traumatic injury when he twisted his right knee at work while stepping off a curb on October 9, 2015. He reported that appellant's history and physical findings on initial evaluation were consistent with acute traumatic injury to the medial meniscus of the right knee.

The Board finds that the opinion of Dr. Dome is not sufficiently rationalized. While Dr. Dome related that appellant had twisted his right knee when he stepped off a curb, appellant only alleged that he felt his knee pop as he stepped off a curb. Medical opinion which is not based on a proper history of injury is of limited probative value.[11] The Board also notes that Dr. Dome reported that appellant had a prior history of knee sprain in April 2010 which resolved with conservative treatment. Dr. Dome noted that appellant's right knee was asymptomatic from May 2010 until his claimed right knee injury in October 2015. While he explained that appellant's prior right knee injury had resolved, he failed to discuss the specific signs and symptoms of this prior injury compared to examination findings following the claimed October 9, 2015 work injury to establish that the right knee medial meniscus tear was

[8] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[9] *James Mack*, 43 ECAB 321 (1991).

[10] *See Robert Broome*, 55 ECAB 339 (2004).

[11] *See Z.D.,* Docket No. 16-0934 (issued November 8, 2016).

unrelated.[12] This is of importance as appellant also described a popping of his right knee following his April 2010 incident, similar to the accepted October 9, 2015 employment incident. A well-rationalized opinion is particularly warranted in this case due to appellant's history of preexisting conditions.[13]

The Board also notes that appellant's diagnostic studies revealed degenerative conditions to the right knee. Other than stating that appellant was asymptomatic prior to the claimed October 9, 2015 work injury, Dr. Dome did not address why appellant's complaints were not caused by his preexisting injury, nor did he discuss whether his preexisting injury had progressed beyond what might be expected from the natural progression of that condition.[14] The Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.[15] It is unclear if appellant's condition was caused by the October 9, 2015 employment incident, a result of a preexisting condition, or due to degenerative changes.

Dr. Dome's opinion on causal relationship fails to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how stepping off a curb would cause appellant's medial meniscus tear.[16] Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.[17] The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident of employment.[18]

The remaining medical evidence of record is also insufficient to establish appellant's claim. Dr. West and Dr. Averion-Mahloch's reports interpreted diagnostic imaging studies and provided no opinion on the cause of appellant's injury. The Board has held that, reports of diagnostic tests are of limited probative value as they fail to provide an opinion on the causal relationship between appellant's employment factors and the diagnosed conditions. For this reason, this evidence is insufficient to meet his burden of proof.[19]

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[12] The Board notes that the lack of diagnostic testing prior to the October 9, 2015 employment incident does not prevent appellant's physician from determining that his right knee injury was caused or aggravated by the October 9, 2015 employment incident. *J.L.*, Docket No. 11-0452 (issued November 25, 2011).

[13] *K.P.*, Docket No. 14-1330 (issued October 17, 2014).

[14] *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

[15] *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

[16] *S.W.*, Docket 08-2538 (issued May 21, 2009).

[17] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[18] *See Lee R. Haywood*, 48 ECAB 145 (1996).

[19] *M.L.,* Docket No. 17-0487 (issued December 8, 2017).

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 his right knee meniscal tear is causally related to the accepted October 9, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 9, 2018
Washington, DC

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

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

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