United States Department of Labor
Employees' Compensation Appeals Board

H.S., Appellant	)	
and	)	**Docket No. 13-2100**
	)	**Issued: April 1, 2014**
DEPARTMENT OF THE ARMY,	)	
Fort Belvoir, VA, Employer	)	

Appearances:
Lonnie Boylan, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 18, 2013 appellant, through his representative, filed a timely appeal from a July 1, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) that denied his claim. 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 sustained an injury in the performance of duty on December 16, 2011.

On appeal, appellant's representative asserts that the medical evidence of record is sufficient to require further development of the case.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On February 3, 2012 a traumatic injury claim was filed on appellant's behalf. The employing establishment indicated that on December 16, 2011 appellant, then a 51-year-old administrative support assistant, suffered right leg knee pain. The injury occurred on the 10th floor of the Taylor Building when he felt knee pain in the right leg while moving furniture. The employing establishment checked a form box "yes," indicating that the facts about the injury was consistent with statements of appellant. Appellant later claimed intermittent wage-loss compensation beginning January 29, 2012.

In a March 13, 2012 letter, OWCP informed appellant that payment of a limited amount of medical expenses was administratively approved, but that the merits of his claim had not been formally considered. Since appellant had claimed wage loss, the claim was reopened. OWCP asked him to submit a detailed medical report from a physician to support that the reported work incident caused or aggravated a right leg condition.

In a March 17, 2012 statement, appellant noted that he contacted his agency by telephone on December 16, 2011, stating that he was being taken to the emergency room by ambulance because he could not walk or move his leg. When he returned to work on January 6, 2012 and again on March 6, 2012, he turned in paperwork concerning the claimed injury. Appellant submitted an emergency medical services (EMS) report dated December 16, 2011. At 1:24 p.m. paramedics arrived to find him sitting in a chair in a food court complaining of severe knee pain. Appellant gave the paramedics a history that he stood from a sitting position and heard a pop in his right knee. The paramedics transported him to a local emergency room.

In a report dated December 16, 2011, Dr. Dahlia England Charles, Board-certified in emergency medicine, described a history of sudden onset of symptoms. Appellant reported that he had been standing for some time, went to his desk, sat down and, when he attempted to rise, he heard a loud pop in his right knee. Dr. Charles provided findings physical on examination and reviewed a right knee x-ray. It demonstrated no evidence of acute fracture and moderate osteoarthritis. Appellant was discharged to go home. Dr. Charles advised that appellant could return to work on December 20, 2011.

Physicians at Kaiser Permanente provided treatment notes dated December 21, 2011 to February 29, 2012. Dr. Vu T. Nguyen, an internist, reported a history that, after moving furniture, appellant sat down and when he stood, felt a pop in his right knee followed by persistent pain. He diagnosed arthralgia of the knee and referred appellant to orthopedics. Dr. Sidney G. Chetta, a Board-certified orthopedic surgeon, reported a history that on December 31, 2008 appellant had right knee arthroscopy. He diagnosed degenerative joint disease of both knees and obesity. On January 10, 2012 Dr. Angeline Huang, Board-certified in family medicine, reported that appellant had fallen down a nonmoving escalator the previous day and reinjured his right knee and sprained his low back. She stated that he was anticipating having a left total knee replacement (TKR) in February or March 2012 and would replace the right knee at a later date. Following Dr. Huang's review of x-rays of the lumbar spine and right knee, she diagnosed back and knee sprains. On January 13, 2012 Dr. Chetta noted that appellant wore braces on both knees and walked with a cane. On January 25 and February 23, 2012 Dr. Huang noted that left knee surgery was planned for March 6, 2012. On February 11, 2012

Dr. Maleeha Chaudary, Board-certified in family medicine, noted appellant's complaint of left knee pain and that he was awaiting surgery. She diagnosed osteoarthritis of the knee and obesity. On February 29, 2012 Dr. Chetta advised that appellant had a recent exacerbation of patellofemoral pain and that his surgery would be rescheduled so that he could have dental procedures. He described physical examination findings and reiterated his diagnosis of bilateral degenerative joint disease of the knees.

In an April 20, 2012 decision, OWCP found that the December 16, 2011 employment incident occurred but that the medical evidence did not establish that his claimed condition was related to the December 16, 2011 incident.

On May 10, 2012 appellant requested a review of the written record. He submitted one page of a May 1, 2012 report in which Dr. Chetta described follow up for a knee joint replacement.[2]

In an August 2, 2012 decision, an OWCP hearing representative affirmed the April 20, 2012 decision.

On August 13, 2012 appellant requested reconsideration. He stated that he had moved furniture as part of his job for many years and submitted evidence previously of record. Appellant submitted e-mails dated August 28, 2009 and February 4, 2011 addressed to him regarding office space and moving boxes. In a December 16, 2011 incident report, security officer William Ashby advised that he was called to the food court that day to assist appellant who complained of severe right knee pain. He called EMS, which transported appellant to Virginia Hospital Center.

On April 2, 2013 appellant's representative asserted that a March 27, 2013 medical report from Dr. Chetta was sufficient to establish that moving furniture on December 16, 2011 caused appellant's right knee condition. In the March 27, 2013 report, Dr. Chetta reported a history that appellant was moving furniture on December 16, 2011 which required continuous bending and squatting. When appellant rose from sitting following a break, he felt a pop in his right knee which then locked up causing acute, excruciating pain. Dr. Chetta opined that bending and squatting while moving furniture on December 16, 2011 precipitated the acceleration of appellant's preexisting right knee degenerative arthritis to the degree that it was permanently aggravated and that he was not able to work, resulting in temporary total disability since December 16, 2011 and the need for a TKR. On April 26, 2013 Dr. Chetta diagnosed TKR, right knee and degenerative joint disease, left knee. He advised that appellant was ambulating with crutches and a return to work was indefinite. Dr. Nguyen provided a verification of treatment on April 29, 2013.

In a decision dated July 1, 2013, OWCP denied modification of the August 2, 2012 decision. It found Dr. Chetta's March 27, 2013 report of diminished probative value because he did not discuss the January 9, 2012 incident when appellant fell on a nonmoving escalator or sufficiently discuss his preexisting osteoarthritic condition.

[2] The report did not note if the procedure was done on the right or left knee.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[3]

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[4] To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[5]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[6] 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 employee.[7] 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 causal relationship.[8]

ANALYSIS

The evidence supports that on December 16, 2011 appellant stood from a chair when he heard a pop in his right knee. The record does not support however that he was moving furniture that day or that any other employment factor caused a right knee condition that day. Contemporaneous evidence from the EMS indicated that appellant heard a pop in his right knee

[3] *Gary J. Watling*, 52 ECAB 278 (2001).

[4] 20 C.F.R. § 10.5(ee) (1999, 2011); *Ellen L. Noble*, 55 ECAB 530 (2004).

[5] *Gary J. Watling, supra* note 3.

[6] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[7] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[8] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

when he rose from a chair while in a food court. The report did not discuss his work activities that day. At the emergency room, Dr. Charles reported a history that appellant had been standing for some time, sat at his desk and when he attempted to rise, heard a loud pop in his right knee. Dr. Nguyen and Dr. Huang reported a history that, after moving furniture, appellant sat down and upon rising felt a pop in his right knee. Dr. Huang also reported however that on January 9, 2012 appellant fell down a nonmoving escalator and sustained a right knee sprain and a low back sprain. The claim form submitted on February 3, 2012 indicates that the injury occurred on the 10th floor of the Taylor Building and that the cause of the injury was that appellant felt right knee pain while moving furniture. The record does not contain a statement by appellant in which he described his activities on the day of injury. There are such inconsistencies in the evidence that serious doubt is cast upon the validity of his claim that he was moving furniture on December 16, 2011. Appellant, therefore, has not met his burden of proof of establishing the occurrence of this incident.[9]

The Board also finds that the medical evidence of record is insufficient to establish that appellant sustained an injury or medical condition caused by the December 16, 2011 incident when he rose from a chair. The only medical opinion that described causal relationship is the March 27, 2013 report in which Dr. Chetta advised that the continuous bending and squatting that appellant did on December 16, 2011 when he was moving furniture caused a permanent aggravation of preexisting degenerative arthritis of the right knee such that he was disabled and had to have a TKR. As he advised that appellant's condition was caused by a circumstance that has not been accepted as a work incident, his opinion is of diminished probative value and insufficient to meet appellant's burden of proof.[10]

The Board has long held that an opinion of a physician supporting causal relationship must be supported with affirmative evidence, explained by medical rationale, be based upon a complete and accurate medical and factual background of the claimant[11] and should be expressed in terms of a reasonable degree of medical certainty.[12] None of the medical evidence in this case contains sufficient rationale that explains the relationship between the diagnosed conditions and the accepted December 16, 2011 work incident when appellant rose from a chair.[13]

As appellant did not submit sufficient medical evidence to establish that he sustained a diagnosed condition caused by the accepted December 16, 2011 employment incident, he did not meet 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.

[9] *See S.P.*, 59 ECAB 184 (2007).

[10] *See Sandra D. Pruitt*, 57 ECAB 126 (2005).

[11] *Patricia J. Glenn*, 53 ECAB 159 (2001).

[12] *Ricky S. Storms*, 52 ECAB 349 (2001).

[13] *Dennis M. Mascarenas, supra* note 8.

CONCLUSION

The Board finds that appellant did not establish that he sustained an injury causally related to the December 16, 2011 employment incident when he rose from a chair and felt right knee pain.

ORDER

IT IS HEREBY ORDERED THAT the July 1, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 1, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board