U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SALVADOR FLORES <u>and</u> U.S. POSTAL SERVICE, POST OFFICE, San Juan, P.R.

Docket No. 96-1937; Submitted on the Record;
Issued June 24, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS, DAVID S. GERSON

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty.

On November 4, 1995, appellant, then a 39-year-old carrier technician, filed an occupational disease claim alleging that he sustained a "degenerative tear of the lateral meniscus with grade 3-4 chondromalicia of the patellofemoral joint and a large medial plicae" aggravated by the requirements of his federal employment. Appellant related that on January 18, 1995 he underwent surgery on the right knee and would eventually require surgery on the left knee.

In support of his claim, appellant submitted the results of two magnetic resonance imaging (MRI) studies. An MRI dated December 13, 1994 revealed a grade 3 tear in the posterior half of the medical meniscus and a probable tear in the lateral meniscus of the right knee. An MRI of the right and left knee obtained on December 13, 1994, revealed a grade 3 tear of the medical meniscus and osteoarthritis of the right knee, and osteoarthritis of the left knee.

Appellant also submitted a report dated October 31, 1995 from Dr. Edgardo Gonzalez who related that appellant underwent arthroscopic surgery on January 18, 1995 which revealed "a degenerative tear of the lateral meniscus with grade 3 to 4 chondromalacia of the patellofemoral joint and a large medial plicae. For this he had a partial meniscectomy with chondral shaving and partial synovectomy for the plicae." Dr. Gonzalez further stated, "Based on the nature of [appellant's] employment, it is my belief that his condition was aggravated by the type of work he performs. Also the changes he has of chondromalacia are permanent and will affect his performance at his job."

By letter dated February 10, 1996, the Office of Workers' Compensation Programs informed appellant that the evidence was currently insufficient to establish his claim and requested that he submit the January 1996 operative report, hospital records, a rationalized medical opinion from his attending physician discussing how and why his diagnosed condition is

causally related to specific employment activities, and a description of his employment duties. The Office provided appellant 30 days within which to submit the requested information.

Appellant did not respond within the time allotted.

By decision dated March 14, 1996, the Office denied appellant's claim on the grounds that the evidence did not establish a causal relationship between the claimed condition or disability and his federal employment.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim, including that fact 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 is causally related to the employment injury.[2]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant.[3] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[4] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,[5] must be one of reasonable medical certainty,[6] 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.[7] The mere fact that a condition manifests itself during a period of

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[4] The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed with to establish a claim; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.[8]

In a report dated October 31, 1995, Dr. Gonzalez diagnosed a degenerative tear of the lateral meniscus, grade 3 to 4 chondromalacia of the patellofemoral joint and a medial plicae and opined that appellant's condition was aggravated by his employment. Dr. Gonzalez, however, provided no explanation or medical rationale in support of his conclusion and, further, did not describe the specific employment duties which aggravated appellant's condition. Medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.[9]

An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.[10] To establish causal relationship, appellant must submit a physician's report in which the physician reviews that factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition.[11] Appellant failed to submit such evidence and therefore failed to discharge his burden of proof.[12]

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[8] *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

[9] *William C. Thomas*, 45 ECAB 591 (1994).

[10] *Willliam S. Wright*, 45 ECAB 498 (1993).

[11] *Id*.

[12] On appeal, appellant argues that he timely mailed additional evidence to the Office. However, the Office did not receive the information prior to rendering its March 14, 1996 decision. The Board is precluded from reviewing evidence submitted for the first time on appeal; *see* 20 C.F.R. § 501.2(c). Appellant may, however, resubmit this evidence to the Office with a formal request for reconsideration; *see* 20 C.F.R. § 501.7(a).

The decision of the Office of Workers' Compensation Programs dated March 14, 1996 is hereby affirmed.

Dated, Washington, D.C.
June 24, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member