U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EARL W. OWENS and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION, Norton, Va.

Docket No. 96-2273; Submitted on the Record;
Issued June 29, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established he sustained an injury in the performance of duty on November 8, 1995; and (2) whether appellant has established he sustained a knee injury causally related to factors of his federal employment.

On November 20, 1995 appellant filed an occupational claim (Form CA-2) alleging that his arthritis in both knees was causally related to crawling and duck walking in the performance of his duties as a coal mine inspector. On November 27, 1995 appellant filed a traumatic injury claim (Form CA-1) alleging that he injured his left knee in the performance of duty on November 8, 1995. Appellant stated on the claim form that his knee became painful while taking samples in the shop area.

In a decision dated January 16, 1996, the Office of Workers' Compensation Programs denied appellant's traumatic injury claim. In a separate decision also dated January 16, 1996, the Office denied appellant's occupational injury claim. Appellant requested reconsideration, and by decision dated April 25, 1996, the Office denied the request for reconsideration without merit review of either claim.

The Board has reviewed the record and finds that appellant has not established he sustained an injury in the performance of duty on November 8, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that he or she sustained an injury while in the performance of duty.[2] In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.110(a).

"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. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[3]

With respect to an employment incident or incidents on November 8, 1995, the Office found that the evidence was insufficient to establish an incident occurred as alleged. The Office found in its January 16, 1996 decision that appellant had offered different histories of injury, and failed to establish a clear understanding of the mechanism of injury. Appellant, however, provided an undated statement received by the Office on December 26, 1995, asserting that on November 8, 1995 he initially felt pain in his left knee when he rose from a chair, and later (at about 6:00 p.m.) he again felt pain while walking down three or four concrete steps. It is well established that an employee's statement as to an employment incident is of great probative value and will stand unless refuted by strong or persuasive evidence.[4] There is no persuasive evidence of record refuting appellant's version as to the time and manner of the alleged incidents on November 8, 1995.[5] It is also noted that appellant does not have to allege an unusual or extraordinary incident as causing his injury.[6] The Board therefore finds that appellant has established employment incidents on November 8, 1995 as alleged.

In order to meet his burden of proof, however, appellant must submit medical evidence establishing that he sustained an injury causally related to the employment incidents. Appellant submitted a form report (Form CA-16) dated December 12, 1995 from Dr. Harold E. Cates, an orthopedic surgeon, diagnosing left knee medial meniscus tear and severe right knee arthritis. Dr. Cates checked a box "yes" that the conditions were causally related to employment, but did not discuss employment incidents on November 8, 1995. The checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[7] The Board finds that appellant did not submit probative medical evidence establishing an injury causally related to employment incidents on November 8, 1995, and therefore he has failed to meet his burden of proof.

The Board notes that regardless of the determination on fact of injury, a Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment.[8] The record contains a properly completed Form CA-16 signed

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[3] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[4] *Robert A. Gregory*, 40 ECAB 478 (1989).

[5] The CA-1 claim form provides few details, other than to allege the knee became more painful at approximately 6:00 p.m. A supervisor indicated on the claim form that his knowledge of the facts about the injury agreed with appellant's statements. In the submitting the claim form, the employing establishment stated in a November 30, 1995 letter that appellant reported he injured his left knee while inspecting a mine, but no further details are offered.

[6] *See Mary Joan Coppolino*, 43 ECAB 988 (1992).

[7] *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

[8] *Elaine K. Kreymborg*, 41 ECAB 256 (1989).

by a supervisor on November 21, 1995. Therefore appellant is entitled to reimbursement of medical expenses for treatment as authorized by the November 21, 1995 Form CA-16.[9]

The Board further finds that appellant has not established an arthritis condition causally related to factors of his federal employment.

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 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 the claimant.[10] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and his federal employment.[11] Neither the fact that the condition became manifest during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by his federal employment, is sufficient to establish causal relation.[12]

Appellant has alleged that his bilateral knee arthritis was causally related to his employment, asserting that such activities as crawling, duck walking, and carrying equipment contributed to his condition. The medical evidence of record, however, is not of sufficient probative value to meet appellant's burden of proof in establishing his claim. In a brief report dated March 4, 1996, Dr. Cates stated, "the right knee arthritis is a result of an injury in 1981 that is followed by subsequent squatting, lifting, and working in the coal mines which exacerbated this condition significantly."[13] He does not provide further detail or explanation as to causal relationship with employment. In a January 30, 1996 report, Dr. Cates briefly discussed the left knee, stating that appellant had left knee osteoarthritis and "I cannot say the cause or relationship to work is certain; although, repetitive crawling and twisting could have exacerbated this condition." As noted above, a physician must provide a reasoned opinion on causal relationship, based on a complete and accurate medical and factual background. Dr. Cates does not provide a complete history, nor support his opinion with medical reasoning. The medical evidence of record does not contain a well-reasoned opinion as to causal relationship between appellant's right or left knee arthritis and his federal employment. The

[9] The form authorizes treatment as medically necessary for a period of up to 60 days.

[10] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[11] *See Walter D. Morehead*, 31 ECAB 188 (1979).

[12] *Manuel Garcia*, 37 ECAB 767 (1986).

[13] The Office accepted that appellant sustained a right medial meniscus tear in the performance of duty on May 27, 1981.

Board accordingly finds that appellant has not met his burden of proof in establishing an occupational claim.

The decisions of the Office of Workers' Compensation Programs dated April 25 and January 16, 1996 are modified to reflect that appellant has established incidents on November 8, 1995 as alleged, and is entitled to reimbursement for medical expenses pursuant to the November 21, 1995 Form CA-16. The decisions are affirmed as modified.

Dated, Washington, D.C.
June 29, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member