

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT G. SANTEE and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION, Fairmont, WV

*Docket No. 03-1143; Submitted on the Record;
Issued July 21, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty, as alleged.

On July 26, 2002 appellant, then a 54-year-old coal mine inspector filed an occupational disease claim alleging that he sustained several injuries to his right knee while performing work duties including climbing ladders, steeping grades, walking in a stooped position, crawling on his hands and knees over uneven terrain and occasionally moving wiggle worm fashion for long distances in cramped spaces which were generally murky and water filled. Appellant asserted that he first became aware of his condition on July 16, 2002 and realized that his current right knee condition was related to his federal employment on July 22, 2002. The record reflects that the Office of Workers' Compensation Programs accepted two previous claims for right knee strain/sprain sustained on January 10 and February 25, 2002. Following the February 25, 2002 work injury, appellant was assigned limited duty, with restrictions on squatting, kneeling, crawling and climbing, which he was performing at the time he filed the instant occupational disease claim. Appellant had intermittent periods of disability until he retired on August 3, 2002.

In an accompanying statement, appellant asserted that, as a part of his job duties, he was required to carry 20 pounds or more of necessary equipment during his travel throughout the mines and had to sustain physical exertion for 6 to 8 hours daily. Appellant noted that he sustained several right knee injuries beginning approximately June 7, 1983 while mainly conducting underground inspections, which required two arthroscopic surgeries and ongoing medical care. He further indicated that, following his most recent injury of February 25, 2002, he was out of work until June 3, 2002 when he returned to light duty in an office clerk position and that he was later given a light-duty position as a dust lab worker.

Appellant submitted a January 3, 2002 report, from Dr. David Stroll, an attending Board-certified orthopedic surgeon, who indicated that appellant had long-standing problems with his knee dating back to 1966 when he was injured in the Marine Corps. He indicated that appellant underwent a medial arthrotomy but continued to have episodes of swelling and pain over the

years. Dr. Stroll noted that in 1983 appellant injured his leg in the mine and underwent a second arthroscopy surgery. He reported that appellant reinjured his knee in 1985, and had another arthroscopic surgery. Dr. Stroll further stated: "Since that time he has had recurrent episodes of pain and injury of the knee while working in the mines of those being in November 2000 and even as late as May and November of 2001." Regarding appellant's condition at the time of the report, Dr. Stroll stated that appellant had pain in his knee when he goes up and down steps or when he does squats for any period of time. He further stated that appellant had episodes of swelling and catching which were worse when he walks in the mine and on uneven ground. Dr. Stoll indicated that walking on uneven ground and persistent climbing and squatting would aggravate his knee. He diagnosed moderately severe degenerative arthritis of the knee.

In a July 11, 2002 report, Dr. Kent Thrush, an attending Board-certified orthopedic surgeon, indicated that appellant had advanced arthritis of the right knee, secondary to an old military injury playing football and to several injuries over the years while working in the mines. He stated that appellant's advanced condition made it difficult for him to walk on uneven ground and perform other activities with the right leg, including squatting and climbing.

In another report dated July 11, 2002, Dr. John Manchin, III, an attending osteopath, noted that appellant had a workers' compensation injury with a date of injury of February 25, 2002, involving the right knee and that appellant still had severe pain and limitation of movement in his right knee. He opined that appellant's condition was permanent and that he would no longer be able to bend, kneel or crawl.

The employing establishment controverted appellant's claim in a letter dated October 7, 2002. The employing establishment noted that appellant made it known that he had first injured his knee in the military playing football, which required surgery and that the surgery was performed inadequately. The employing establishment indicated that it was also well known that for many years appellant had been an avid golfer who plays four times a week. The employing establishment argued that an individual with a debilitating knee injury would be unable to perform these types of activities, especially to the degree that appellant continued. The employing establishment noted that, although appellant does wear a knee brace, the sport of golf requires a good degree of twisting and bending which would aggravate the alleged condition.

By decision dated October 30, 2002, the Office denied appellant's claim on the grounds that he did not submit medical evidence showing that he sustained an occupational injury on or about July 16, 2002 causally related to employment factors.

In a letter dated November 8, 2002, appellant disagreed with the prior decision and requested a review of the written record. Appellant argued that the claim he filed on July 26, 2002 was for an occupational disease attributed to his hostile work environment while conducting underground inspections in the performance of duty and not a new injury. He indicated that he first became aware of his illness on July 16, 2002 when he received a medical report from Dr. Manchin submitted to the record dated July 11, 2002, which stated that he had permanent restrictions because of his right knee and was not able to bend, kneel or crawl. Appellant further argued that on July 22, 2002 he learned that the illness was aggravated by his employment when he received the report from Dr. Thrush dated July 11, 2002 which indicated that he had advanced arthritis of the right knee secondary to an old military injury playing

football and also several injuries over the years while working in the mines, which made it difficult for him to perform strenuous types of activity with the knee.

By decision dated March 13, 2003, an Office hearing representative affirmed the Office's October 30, 2002 decision.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an employment injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 of 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. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on 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, 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.⁴

In the instant case, it is not disputed that appellant has developed advanced arthritis of the right knee which has been attributed to an old military injury dating back to 1966 and a series of work-related injuries beginning in 1983 involving appellant's former coal mining duties, which resulted in permanent restrictions. Further, the record establishes that the Office has previously accepted that appellant at least sustained a right knee strain/sprain on January 10 and

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ *Id.*

February 25, 2002 in the performance of duty, for which appellant is still authorized medical treatment. However, appellant has failed to meet his burden of proof that he sustained a new occupational injury.

Appellant has indicated on the July 26, 2002 CA-2 claim form that he became aware of this illness on July 16, 2002 and realized that the condition was caused by his federal employment on July 22, 2002, when he received the medical reports of Drs. Manchin and Thrush both dated July 11, 2002, who discussed his right knee condition, the causes and resulting permanent restrictions.⁵ Appellant has identified the factors of employment, which he believed caused or aggravated the claimed occupational illness, namely; climbing ladders, walking on steep grades, walking in a stooped position and crawling on his hands and knees over uneven terrain while conducting underground inspections. The record however reflects that the reports from the physicians which appellant based his recent claim relate to previously accepted injuries. The report of Dr. Thrush dated July 11, 2002 actually pertains to his January 24, 2002 examination of appellant following the January 10, 2002 accepted right knee injury and the report from Dr. Manchin dated July 11, 2002 only discusses the February 25, 2002 accepted employment injury. Neither physician related that appellant sustained a new and separate knee injury other than those accepted in January and February 2002 attributed to the implicated work duties. Following the February 25, 2002 injury, appellant was out of work until June 3, 2002 when he returned to light duty as an office clerk and dust lab worker until he retired on August 3, 2002. None of the reports of record show that the work-related duties implicated by appellant would have aggravated his accepted right knee condition or caused a new injury.⁶

Because appellant has submitted insufficient medical opinion evidence to support causal relationship, he has failed to establish his July 26, 2002 claim for compensation. The Board will affirm the denial of his claim.

⁵ Dr. Manchin was an attending osteopath and Dr. Thrush was an attending Board-certified orthopedic surgeon.

⁶ The record contains a January 3, 2002 report in which Dr. Stall, an attending Board-certified orthopedic surgeon, noted that appellant reported symptoms when walking in mines and on uneven ground. However, Dr. Stall did not provide any notable discussion of appellant's duties or a clear opinion that he sustained an occupational injury due to the implicated employment factors.

The March 13, 2003 and October 30, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
July 21, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member