United States Department of Labor
Employees' Compensation Appeals Board

TERRY D. DAVENPORT, Appellant	)	
and	)	**Docket No. 04-616**
	)	**Issued: May 6, 2004**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Denver, CO, Employer	)	

Appearances:
Terry D. Davenport, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On January 5, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 1, 2003, which rejected appellant's occupational disease claim. Pursuant to 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 has established that he sustained an occupational disease causally related to factors of his federal employment.

FACTUAL HISTORY

On September 22, 2003 appellant, then a 38-year-old food service worker, filed an occupational disease claim alleging that on September 17, 2003 he first realized that he had developed pain in both knees, causally related to his employment duties. Appellant did not stop

work. He first sought medical treatment on September 17, 2003 with Dr. Steven Oboler, a Board-certified internal medicine specialist, with the employing establishment.

By letter dated September 26, 2003, the Office advised appellant that the evidence of record was insufficient to establish his claim. It requested that he further describe the work activities he implicated in causing his condition and medical evidence identifying any condition caused and discussing causal relationship.

In response, appellant submitted a September 30, 2003 report from Dr. John M. Gargaro, an orthopedic surgeon, who noted that appellant was following up after a magnetic resonance imaging (MRI) scan of the left knee. Dr. Gargaro noted that the MRI scan showed a complete bucket-handle tear of the lateral meniscus, with the rest of the knee being unremarkable. He diagnosed a bucket-handle tear of the left lateral meniscus and recommended an arthroscopic partial meniscectomy.

Appellant underwent arthroscopic knee surgery on October 24, 2003. Dr. Gargaro indicated that appellant could return to sedentary duty on October 30, 2003.

On October 28, 2003 the Office received a September 17, 2003 work restriction form which noted the date of appellant's injury as September 12, 2002, noted his diagnosis as "bilateral knee pain," and indicated that he could return to light-duty sedentary work where he could elevate his left leg for 40 minutes in mid-morning and mid-afternoon. The signature on the work restriction form is illegible.

On October 28, 2003 the Office received a September 17, 2003 report from a nurse-practitioner, which was apparently cosigned by a physician, but the physician's signature is illegible. The nurse practitioner noted that appellant had a one-year history of bilateral knee pain which began on September 12, 2002, but which was not attributed to a traumatic event at work. She noted that appellant's left knee was worse than the right, and that he attributed it to working, standing and frequent walking all day on the job. The nurse practitioner noted that appellant walked without a limp and had no other physical symptoms accompanying his complaints of pain. She diagnosed "bilateral knee pain," and recommended work restrictions.

Appellant submitted several pages of excerpted text about knee arthroscopy procedures, and copies of photographs of his knee taken through an arthroscope. On November 3, 2003 appellant stated that he engaged in many duties requiring pushing and pulling carts, standing, bending and stooping. He stated that he performed tray set-up on the conveyor belt, scraped dishes, lifted large sheet pans loaded with food or drink and served the food. Appellant believed his knee condition was aggravated by these constant activities, which he performed on a daily basis. He denied any outside activities or other knee injuries and stated that he started to experience knee pain about four years earlier.

On November 21, 2003 the Office received an October 6, 2003 job analysis from the employing establishment which noted that appellant had an adjustable task stool available in the area for alternating sitting and standing tasks, which had been supplied for light duty use.

By decision dated December 1, 2003, the Office rejected appellant's claim finding that he failed to establish that he sustained a knee condition causally related to factors of his federal employment. The Office found that appellant had not submitted sufficient rationalized medical evidence discussing the causal relationship of his condition with the implicated employment factors or to establish that his bilateral knee pain was caused by work factors.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim, including the fact that he 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]

In the instant case, appellant has established that he is an employee of the United States and that his claim was timely filed. However, he has not established that he sustained an injury in the performance of duty as alleged.

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;[3] (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[4] 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.[5] The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that 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 and accurate factual and medical background of the claimant,[6] must be one of reasonable medical certainty,[7] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by

[1] 5 U.S.C. § 8101-8193.

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

[3] *See Ronald K. White*, 37 ECAB 176, 178 (1985).

[4] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979).

[5] *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

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

[7] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

the claimant.[8] Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.[9]

ANALYSIS

Appellant did not submit any medical report or treatment notes from Dr. Oboler, the physician who originally treated him. The treatment note from Dr. Gargaro, lacked any description of a history of injury or description of appellant's job duties. Dr. Gargaro diagnosed a left knee meniscus tear but did not provide any opinion on the causal relationship of the condition found with any factors of appellant's federal employment. Dr. Gargaro described a unilateral bucket-handle tear of the left lateral meniscus, as demonstrated by an MRI scan, but he did not discuss causation of this tear nor how it related to appellant's employment activities. Dr. Gargaro recommended an arthroscopic partial meniscectomy. As this report lacks any history of the development of the left lateral meniscal tear condition and did not address the causal relationship of the tear to factors of appellant's employment, it is of diminished probative value and is insufficient to establish appellant's claim.[10] A later notation on a prescription form indicating the date of surgery and releasing appellant to return to sedentary duty on October 30, 2003, was incomplete and did not provide an opinion on causal relationship in support for his occupational disease claim.[11]

The May 6, 1993 report prepared by an occupational health nurse is of no probative value with respect to causal relationship. The Board has frequently explained that a nurse's report is of no probative value in establishing fact of injury, as the diagnosis of an injury is a medical determination. A nurse is not defined as a physician under the Act.[12] Although this report appears to be cosigned, any physician's signature is illegible. Therefore it cannot be established that the report was cosigned by a physician.[13] This principle also applies to the September 17, 2003 work restriction form which was also illegible.

Appellant submitted copies of pages from a medical periodical regarding arthroscopic surgery. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed

[8] *See Donald J. Miletta*, 34 ECAB 1822 (1983); *William E. Enright*, 31 ECAB 426, 430 (1980).

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

[10] *See Anna C. Leanza*, 48 ECAB 115 (1996); *Connie Johns*, 44 ECAB 560 (1993) (the weight of medical opinion evidence is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the opinion). *See also Daniel J. Overfield*, 42 ECAB 718 (1991) (medical opinions which are based on an incomplete or inaccurate factual background are entitled to little probative value in establishing a claim).

[11] *Id.*

[12] 5 U.S.C. § 8101(2). *See Joseph N. Fassi*, 42 ECAB 677 (1991).

[13] *See* 5 U.S.C. § 8101(2). The Act defines the term "physician." *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

condition and an employee's federal employment. Such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.[14] Therefore, these materials have no probative value in establishing appellant's claim. The arthroscopic photographs have no probative value by themselves, as they lack any medical explanation addressing the cause of appellant's knee condition to the implicated factors of his federal employment.

Appellant provided only his opinion as to the causal relationship of his bilateral knee pain to factors of his federal employment. However, neither the fact that a disease or condition becomes apparent during a period of employment, nor appellant's belief that the disease or condition is caused or aggravated by the conditions of employment is sufficient to establish causal relation.[15] This is a medical issue. Appellant's opinion has no probative value in establishing his occupational disease claim as he is not a physician under the Act.[16]

CONCLUSION

Appellant did not submit sufficient rationalized medical evidence to establish his occupational disease claim.

[14] *William C. Bush*, 40 ECAB 1064, 1075 (1989).

[15] *See Neal C. Evins*, 48 ECAB 252 (1996); *Ronald M. Cokes*, 46 ECAB 967 (1995).

[16] *See Sheila Arbour (Victor E. Arbour),* 43 ECAB 779 (1992) (lay individuals cannot render probative medical opinions).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 1, 2003 be and hereby is affirmed.

Issued: May 6, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member