United States Department of Labor
Employees' Compensation Appeals Board

RICHARD M. ALVARADO, Appellant	)	
and	)	**Docket No. 06-337**
	)	**Issued: April 18, 2006**
DEFENSE LOGISTICS AGENCY, RANDOLPH AIR FORCE BASE, San Antonio, TX, Employer	)	

Appearances:
Richard M. Alvarado, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 28, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 9, 2005 which denied his 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 met his burden of proof to establish that he sustained an injury on May 26, 2005.

FACTUAL HISTORY

On May 26, 2005 appellant, then a 57-year-old store worker, filed a traumatic injury claim (Form CA-1), alleging that on that day he injured his right knee when he slipped on soap that was on the floor and fell back and bent his right knee backwards. He did not stop work.

Accompanying appellant's claim were reports prepared by Dr. Roger J. Lunke, a Board-certified orthopedic surgeon, which included a Texas Workers' Compensation work status report dated June 13, 2005; a partial attending physician's report dated June 13, 2005; a June 15, 2005 medical report dated June 15, 2005; and a July 15, 2005 request for right side knee arthroscopy/surgery. The June 13, 2005 status report noted that appellant fell backward on his right knee at work on May 26, 2005 and that he could return to work on that date with restrictions. The attending physician's report of June 13, 2005 noted a history of appellant slipping on liquid soap and falling backwards on his back with the right knee turning backwards. It also noted that appellant had previously injured his right knee on November 23, 2004. Dr. Lunke did not provide a diagnosis, but advised that he took x-rays and had ordered a magnetic resonance imaging (MRI) scan. He noted with a checkmark "yes" that appellant's condition was caused or aggravated by the described employment activity. Dr. Lunke further stated that appellant was able to work light duty with restrictions from June 14, 2005 until an undetermined time. In the June 15, 2005 report, Dr. Lunke advised that appellant was seen on June 13, 2005 for a new injury sustained to his right knee. He advised that, on May 26, 2005, appellant slipped hyperextending his left knee and hyperflexing his right knee. Appellant had a prior arthroscopic surgery three and half years earlier and had not had any problems since he was last seen in December 2004. Dr. Lunke opined that appellant's subjective symptoms and his physical findings were indicative of an acute probable internal derangement of the right knee as a result of the May 26, 2005 reinjury. He recommended that appellant be placed on light duty and be approved for an MRI scan and a diagnostic arthroscopy.

In a letter dated July 19, 2005, the Office advised appellant of the evidence needed to establish his claim. The Office requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

Appellant resubmitted Dr. Lunke's June 15, 2005 report, together with a copy of a July 13, 2005 MRI scan of the right knee, which noted normal and abnormal findings, and an August 16, 2005 duty status report. In the August 16, 2005 duty status report, the employing establishment noted on its portion of the report that the incident occurred on May 26, 2005 when appellant slipped on liquid soap and fell backwards, landing on his backside and twisting his right knee. Dr. Lunke, on the physician's portion of the report, diagnosed a hyperflexion strain of the right knee with a tear of the posterior horn and body of lateral meniscus. He opined, with a checkmark "yes" that the history as described corresponded to the diagnosis. Dr. Lunke further advised that appellant was on light duty with restrictions from June 14, 2005 to the present and was awaiting surgery approval.

On September 9, 2005 the Office denied appellant's claim for compensation. The Office found that the medical evidence was not sufficient to establish that his knee condition was caused by the May 26, 2005 incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[2]

Office 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.[3] To determine whether an employee sustained a traumatic injury in the performance of duty, the Office 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.[4]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[5] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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, 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.[6] 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.[7]

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[1] 5 U.S.C. §§ 8101-8193.

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

[3] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB ____ (Docket No. 03-1157, issued May 7, 2004).

[4] *Gary J. Watling, supra* note 2.

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

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

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

Under the Act, the term disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.[8] Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[9]

ANALYSIS

The Office accepted the incident of May 26, 2005 when appellant slipped and fell and landed backwards on his right knee. However, the Office found that the medical evidence provided did not establish that the right knee condition resulted from the accepted event. Thus, the issue is whether appellant met his burden of proof to establish that he sustained a right knee condition causally related to the work-related incident on May 26, 2005.

On June 13, 2005 Dr. Lunke set forth the history of appellant's May 26, 2005 injury, the treatment provided and placed appellant on light duty with restrictions commencing June 14, 2005. On June 15, 2005 Dr. Lunke noted that appellant had a prior arthroscopic surgery three and half years earlier and noted that he had not had any problems with his knee since seen in December 2004. Dr. Lunke opined that appellant's current subjective symptoms and his physical findings were indicative of an acute probable internal derangement of the right knee as a result of the May 26, 2005 incident. In an August 16, 2005 duty status report, Dr. Lunke diagnosed a hyperflexion strain of the right knee with a tear of the posterior horn and body of lateral meniscus and opined that the history as described from the May 26, 2005 event corresponded to the diagnosis.

While Dr. Lunke's reports lack sufficient medical rationale sufficient to discharge appellant's burden of proof to establish by the weight of reliable, substantial and probative evidence that his right knee condition was caused by the slip and fall on May 26, 2005, this does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished. Dr. Lunke examined appellant, noted a proper history of the incident at work, reviewed objective studies including an MRI scan and concluded that the May 26, 2005 incident caused a right knee hyperflexion strain with tear of the posterior horn and body of the lateral meniscus. In the absence of medical evidence to the contrary, Dr. Lunke's reports are sufficient to establish a *prima facie* claim.[10]

It is well established that proceedings under the Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares

[8] *Cheryl L. Decavich*, 50 ECAB 397 (1999).

[9] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[10] *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

responsibility in the development of the evidence.[11] The case shall therefore be remanded to the Office to further develop the medical evidence to determine what, if any, right knee condition and disability appellant may have sustained as a result of the May 26, 2005 slip and fall. After this and such further development as deemed necessary, the Office shall issue an appropriate merit decision.

CONCLUSION

The Board finds this case is not in posture for decision regarding whether appellant sustained an injury on May 26, 2005 caused by a slip and fall on that date.

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2005 decision of the Office of Workers' Compensation Programs be vacated and the case remanded to the Office for further proceedings consistent with this opinion of the Board.

Issued: April 18, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[11] *See Jimmy A. Hammons, supra* note 10.