United States Department of Labor
Employees' Compensation Appeals Board

R.W., Appellant	)	
and	)	**Docket No. 06-1996**
	)	**Issued: December 26, 2006**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Los Angeles, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 28, 2006 appellant filed a timely appeal from a March 22, 2006 merit decision denying his claim and a May 23, 2006 denial of oral hearing before the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit and nonmerit decisions.

ISSUES

The issues are: (1) whether appellant met his burden of proof in establishing that he developed an occupational disease in the performance of duty; and (2) whether the Office properly denied appellant's request for an oral hearing.

FACTUAL HISTORY

On December 30, 2005 appellant, then a 64-year-old baggage screener, filed an occupational disease claim alleging that factors of his employment contributed to the "accelerated decline" of his right knee osteoarthritis. He noted that his condition began on

September 3, 2002. Appellant stopped work on December 27, 2005 and, after intermittent attempts to return to duty, resumed work on March 9, 2006.

On January 20, 2006 the Office sent appellant a letter informing him of its receipt of his claim. He was advised to provide additional information to assist the Office in its disposition of his claim. Appellant submitted an "Industrial Orthopaedic Consultation" report, dated January 3, 2006, from Dr. Peter R. Kurzweil, a Board-certified orthopedic surgeon, who noted that appellant experienced aggravation of an old injury to his right knee while performing his job duties. Dr. Kurzweil noted that appellant related his knee problems to prolonged standing on the job. He examined appellant and found a valgus deformity and tenderness along the right medial joint line. Dr. Kurzweil stated that appellant's current condition "developed gradually while at work" and attributed the aggravation to standing. He also noted that appellant lifted passenger luggage weighing up to 70 pounds and engaged in "twisting, turning, pulling, pushing, etc."

On January 3, 2006 Dr. Kurzweil stated that appellant's prior knee condition was exacerbated by the requirement that he stand between seven and eight hours each day. He noted that appellant's pain developed while he was standing at work.

On February 1, 2006 appellant submitted a Form CA-7 claim for compensation. He submitted additional medical reports from Dr. Kurzweil and Dr. Saeed Malekafzali, a Board-certified orthopedic surgeon, together with a magnetic resonance imaging (MRI) scan of his left knee, dated September 24, 2005, from Dr. Joel B. Levine, Board-certified in nuclear medicine.

By decision dated March 22, 2006, the Office denied appellant's claim, finding that he failed to establish a causal relationship between his right knee condition and factors of his employment.

Appellant requested an oral hearing on April 27, 2006. He submitted additional reports from Dr. Kurzweil, dated April 10 and 25, 2006, respectively.

By decision dated May 23, 2006, the Office denied appellant's request for an oral hearing on the grounds that it was dated more than 30 days after issuance of the March 22, 2006 decision. The Office exercised its discretion in considering appellant's request and determined that the matter would be best dealt with by appellant submitting a request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

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 an injury was sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[2] An award of compensation may not be based on surmise, conjecture, speculation or upon

[1] 5 U.S.C. §§ 8101-8193.

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

appellant's own belief that there is a causal relationship between his or her claimed injury and his or her employment.[3] To establish a causal relationship, appellant must submit a physician's report, in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.[4]

An occupational disease or injury is one caused by specified employment factors occurring over a longer period than a single shift or workday.[5] The test for determining whether an employee sustained a compensable occupational disease or injury is three pronged. To establish the factual elements of the claim, a claimant must submit: "(1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the 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 factors identified by the claimant."[6]

ANALYSIS -- ISSUE 1

The Board finds that appellant failed to meet his burden of proof in establishing a causal relationship between his right knee condition and factors of his employment. Although several medical reports in the case file address causal relationship, none support their conclusions with a well-reasoned explanation as to how appellant's employment factors caused or aggravated the right knee.

Appellant submitted two reports from Dr. Kurzweil, both dated January 3, 2006. Dr. Kurzweil noted that appellant related his knee symptoms to prolonged standing required in his job. He noted valgus deformity and tenderness of the right medial joint line. However, Dr. Kurzweil addressed causal relationship with reference to appellant's belief as to the cause of his condition and on his understanding of appellant's job requirements. He did not provide medical rationale in which he explained how or why the standing or lifting required in appellant's job caused or aggravated the diagnosed conditions. The fact that appellant's current symptoms manifested themselves during a period of employment or that job activities may have aggravated appellant's preexisting medical condition does not imply that there is a causal relationship between appellant's condition and factors of his employment.[7] The Board has held

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[3] *Donald W. Long*, 41 ECAB 142 (1989).

[4] *Id.*

[5] *D.D.*, 57 ECAB ___ (Docket No. 06-1315, issued September 14, 2006).

[6] *Michael R. Shaffer*, 55 ECAB 386, 389 (2004), *citing Lourdes Harris*, 45 ECAB 545 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *Dennis M. Mascarenas*, 49 ECAB 215 (1997); *William Nimitz, Jr.*, 30 ECAB 567 (1979).

that "[t]he mere concurrence of a condition with a period of employment does not raise an inference of causal relation between the two."[8] Moreover, a medical report that simply relates appellant's own assessment of his condition carries little probative weight.[9]

Dr. Kurzweil did not further address causal relationship on February 7, 2006. The results of the September 24, 2005 MRI scan and reports from Dr. Malekafzali did not discuss the issue of causal relationship between appellant's right knee condition and factors of his employment. A "New Patient Examination" form noted that appellant lifted at work, but was not signed by a physician.[10]

The Board finds that appellant failed to submit medical evidence in which a physician rendered a well-reasoned narrative medical opinion, explaining how factors of his employment caused or exacerbated his right knee condition. Appellant has failed to meet his burden of proof.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary. Section 10.615 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record. The Office's regulations provide that the request must be sent within 30 days of the date of the decision for which a hearing is sought and also that the claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of Board precedent.

ANALYSIS -- ISSUE 2

The Board finds that the Office properly denied appellant's request for an oral hearing on the grounds that the request was untimely filed. Appellant requested an oral hearing in response

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[8] *Robert M. Sanford*, 27 ECAB 115, 117 (1975).

[9] Generally, findings on examination are needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurt too much to work without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation. *William A. Archer*, 55 ECAB 674 (2004); *see also Dennis M. Mascarenas*, *supra* note 7.

[10] The Board has held that medical reports lacking proper identification may not be considered as probative evidence in support of a claim. *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988). *See* 5 U.S.C. § 8101(2). This subsection 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).

to the decision issued March 22, 2006. His request was dated April 27, 2006, more than 30 days after the date of issuance of the Office's decision.

Although the Office determined that appellant's request was untimely, it nevertheless exercised its discretion by examining his request for a hearing. The Office determined that appellant's case would be best served by his submission of a request for reconsideration together with new supporting evidence. Accordingly, the Board finds that the Office acted within its discretion in denying appellant's hearing request as untimely, because appellant failed to file the request within the statutory time frame.[11]

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof in establishing that he developed an occupational disease in the performance of duty, and that the Office properly denied appellant's untimely request for an oral hearing.

[11] With his request for an oral hearing, appellant submitted two additional medical reports from Dr. Kurzweil. Since these reports were not in the case file at the time the Office rendered its merit decision, however, it is new evidence and the Board cannot consider it. The Board's review is limited to evidence in the record at the time the Office rendered its merit decision. 20 C.F.R. § 501.2(c). However, nothing in the Act or its implementing regulations prohibits appellant from submitting the above-noted evidence or any other new and relevant evidence to the Office in conjunction with a request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 23 and March 22, 2006 are affirmed.

Issued: December 26, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board