United States Department of Labor
Employees' Compensation Appeals Board

A.M., Appellant	)	
and	)	**Docket No. 07-506**
	)	**Issued: July 2, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Pottsville, PA, 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 December 14, 2006 appellant filed a timely appeal from August 9 and September 25, 2006 merit decisions of the Office of Workers' Compensation Programs that denied his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty.

FACTUAL HISTORY

On June 10, 2006 appellant, then a 57-year-old city carrier, filed a traumatic injury claim alleging that he sustained an injury to the back of his right knee on June 6, 2006 when the knee "became weak and buckled." He did not stop work. In a June 10, 2006 statement, the employing establishment controverted the claim. Appellant's supervisor stated that appellant did

not notify him of his claimed injury on the day it allegedly happened, a Tuesday, and stated: "[Appellant] [tele]phoned in sick Friday morning at 06:10 complaining of pain in his knee. Never ... did he mention that it was a work[-]related injury."

Appellant submitted treatment notes from Dr. Stephen R. Soffer, a Board-certified orthopedic surgeon. On June 20, 2006 Dr. Soffer advised "work -- no steps or carrying mail." Appellant also provided a June 30, 2006 note from a medical facility indicating that a right knee arthroscopy was scheduled for July 21, 2006.

On July 7, 2006 the Office requested additional factual and medical information concerning appellant's claim. Subsequently, the Office received a June 20, 2006 physician's assistant report, noting that appellant first experienced knee pain two weeks earlier when he "felt his knee was buckling a little bit with walking while he was at work." The physician's assistant provided a follow-up report on June 28, 2006 but did not discuss the circumstances of appellant's claimed injury. In a July 5, 2006 duty status report, Dr. Soffer noted that appellant would perform light-duty work, with no use of stairs and no carrying of mail until July 21, 2006. In a July 5, 2006 attending physician's report, Dr. Soffer advised that a magnetic resonance imaging (MRI) scan showed evidence of a right medial meniscus tear and recommended that appellant continue to work light duty, without carrying mail or climbing stairs. Dr. Soffer stated that appellant's "knee buckled while walking at work" and he checked a box "yes" in response to a question regarding whether appellant's diagnosed condition was caused or aggravated by his work. In an undated report, received on July 21, 2006, Dr. Soffer advised that appellant's "knee buckled at work while walking." He diagnosed right knee medial meniscus tear. Dr. Soffer reiterated that appellant was injured while "walking at work." Appellant also provided a June 22, 2006 report from Dr. Nancy Leschik, a Board-certified osteopath and radiologist, advising that an MRI scan of the right knee revealed findings consistent with tear and degeneration at the posterior and anterior horn of the medial meniscus.

By decision dated August 9, 2006, the Office denied appellant's claim on the grounds that appellant had not met his burden of proof in establishing that an incident occurred at the time, place and in the manner alleged.

Appellant requested reconsideration and submitted an August 16, 2006 statement discussing the circumstances of his claimed injury. He explained that on June 6, 2006 while walking his route, he felt his knee buckle causing him to hit his knee on a step. Appellant stated: "It was right then I knew something was wrong." He stated that he rested and then completed his delivery route but continued to experience pain. Appellant claimed that he reported the incident to his supervisor after he realized that he had "done something" to his knee and then sought treatment from Dr. Soffer.

Appellant also forwarded an August 18, 2006, report from Dr. Soffer who advised that appellant injured his knee while walking up a set of stairs on his mail delivery route. Dr. Soffer explained: "[Appellant's] knee buckled and he then fell forward and his kneecap hit on the step and he started with pain after the injury." He concluded: "We do believe that the medial meniscus tear in [appellant's] right knee is directly related to the injury that he sustained at work."

By decision dated September 25, 2006, the Office conducted a merit review and denied appellant's request for reconsideration. The Office found that the June 6, 2006 work incident was not established.

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 disabilities and/or specific conditions 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]

In order to determine whether an employee actually sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, 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.[4] An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[5] An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[6] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statements in determining whether a *prima facie* case has been established.[7] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative force and will stand unless refuted by strong or persuasive evidence.[8]

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[1] 5 U.S.C. §§ 8101-8193.

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

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

[4] *See Louise F. Garnett*, 47 ECAB 639 (1996).

[5] *See Gene A. McCracken*, 46 ECAB 593 (1995).

[6] *See Louise F. Garnett*, *supra* note 4.

[7] *Linda S. Christian*, 46 ECAB 598 (1995).

[8] *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[9] The 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 the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[10] The opinion of the physician must be based on a complete factual and medical background of the claimant[11] and must be one of reasonable medical certainty[12] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[13]

ANALYSIS

The Board finds that appellant has not met his burden of proof in establishing that an injury occurred at the time, place and in the manner alleged. Appellant's description of his alleged injury contains significant inconsistencies which cast doubt on the validity of his claim.

On his CA-1 claim form, appellant indicated that he sustained injury to the back of his knee when it became weak and buckled. He did not provide additional explanation of the circumstances surrounding his claimed injury. The employing establishment, in controverting appellant's claim, noted that appellant allegedly injured himself on a Tuesday, but did not report his injury until the following Friday and at that time did not inform his supervisor that he believed his injury to be work related. Appellant filed his traumatic injury claim on June 20, 2006, two weeks after the alleged incident on June 6, 2006. Upon receiving the Office's request for information, he submitted physician's assistant reports and a medical report from Dr. Soffer indicating that his claimed injury arose "from walking at work." However, he did not provide additional factual information or descriptions of the circumstances of his claimed injury.

Following the Office's initial denial, appellant provided further explanation of the factual circumstances of his claim. Appellant stated that his knee buckled while he was walking his mail delivery route, causing him to have to stop and rest. In his August 16, 2006 statement, appellant wrote: "It was right then I knew something was wrong," indicating that he presumably realized instantly that he was injured. However, in the same statement appellant claimed that he did not realize that he was injured despite continuing pain during the rest of his route. Additionally, he initially claimed injury to the "back" of his knee; however, appellant's August 16, 2006 statement and Dr. Soffer's August 18, 2006 note assert that appellant's knee first buckled and he then struck his kneecap while climbing steps. Thus, appellant's assertions contain inconsistencies with regard to the circumstances of his injury and the nature of the injury itself.

[9] *John J. Carlone*, 41 ECAB 354 (1989).

[10] *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[11] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[12] *John W. Montoya*, 54 ECAB 306 (2003).

[13] *Judy C. Rogers*, 54 ECAB 693 (2003).

The Board finds that the inconsistencies inherent in appellant's description of his injury are sufficient to cast serious doubt on the validity of his claim.[14] Accordingly, the Board concludes that appellant did not meet his burden of proof in establishing that he experienced an employment incident at the time, place and in the manner alleged.

On appeal, appellant asserted that his injury was caused by "wear and tear" from his 19-year service with the employing establishment. However, this contention is not consistent with a traumatic injury occurring on June 6, 2006 and was not raised before the Office. Additionally, the Board notes that an injury caused by "wear and tear" would be more appropriately handled in an occupational disease claim,[15] whereas appellant has submitted a traumatic injury claim.[16]

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a traumatic injury in the performance of duty because the evidence was insufficient to show that an employment incident occurred at the time, place and in the manner alleged.

[14] *See Louise F. Garnett*, *supra* note 4.

[15] An occupational disease is a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

[16] A traumatic injury is a condition caused by a single event or incident or a series of events or incidents within a single workday or shift. 20 C.F.R. § 10.5(ee).

ORDER

IT IS HEREBY ORDERED THAT the September 25 and August 9, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 2, 2007
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