United States Department of Labor
Employees' Compensation Appeals Board

T.M., Appellant	)	
and	)	**Docket No. 07-1797**
	)	**Issued: January 16, 2008**
DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, Grand Coulee, WA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 25, 2007 appellant filed a timely appeal from a May 4, 2007 merit decision of the Office of Workers' Compensation Programs denying his 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 osteoarthritis of the left knee, shoulders, wrists, hips, ankles and feet causally related to factors of his federal employment.

FACTUAL HISTORY

The Office accepted that appellant sustained a right knee strain, meniscal tear and osteoarthritis due to an April 10, 1990 employment injury. The Office assigned the claim file

number 140253510 and authorized a right total knee replacement on February 24, 2004. Appellant stopped work on February 4, 2004 and returned to work on May 10, 2004.

On August 26, 2003 appellant filed a notice of recurrence of disability on that date causally related to his April 10, 1990 employment injury. He related that, after he resumed work in 1990 following arthroscopic surgery, he experienced increased discomfort. The Office developed the notice of recurrence of disability as an occupational disease claim, assigned file number 142034501.

By letter dated October 8, 2004, the Office requested that appellant clarify the condition which he claimed as related to factors of his federal employment. The Office noted that he had an accepted claim for right knee osteoarthritis under file number 140253510. The Office informed appellant that the evidence it had reviewed, the medical evidence under file number 140253510, was insufficient to establish his claim and requested additional factual and medical information.[1]

In a response received November 8, 2004, appellant attributed his arthritis in his joints to his 1990 employment injury and his employment duties, including extensive walking on concrete, climbing stairs and operating valves and disconnects. He stated: "The concrete floors and stairs were greatly accelerating my arthritis. The arthritis is in both knees, both ankles, both feet, both hips, both shoulders and both wrist[s]." In 1999 appellant began working in the switchyard rather than the powerhouse so that he did not have to walk on concrete.

By decision dated December 7, 2004, the Office denied appellant's claim on the grounds that the medical evidence did not establish that he sustained a condition due to the accepted work factors. On December 11, 2004 appellant requested an oral hearing.

In a report dated January 10, 2005, Dr. Gary L. Craig, a rheumatologist, discussed appellant's history of right knee osteoarthritis due to a work injury. He also diagnosed "osteoarthritis of the left knee, without any clear injury at work" and found that "extensive weight bearing [that] he had to do especially climbing stairs and spending long hours on concrete may have aggravated his [osteoarthritis] symptoms." Dr. Craig further diagnosed rotator cuff tendinitis with impingement of the shoulder which "may be contributed to by his recurrent lifting and reaching at work in the absence of a single specific injury."

On January 24, 2005 an Office hearing representative set aside the December 7, 2004 decision after finding that the case record was incomplete. He noted that the evidence listed by the Office as reviewed in its October 2004 development letter was not contained in the case record. The hearing representative remanded the case for reassemblage of the case record and a *de novo* decision.

In a report dated August 31, 2005, Dr. George R. Monkman, a Board-certified orthopedic surgeon, diagnosed impingement of the left shoulder and discussed appellant's history of a 1996

[1] The medical evidence reviewed by the Office under file number 140253510 is relevant to appellant's accepted right knee condition.

distal clavical excision. He addressed appellant's work requirements, including walking, stair climbing, kneeling and squatting. Dr. Monkman stated:

> "It is certainly a good possibility that his work situation did aggravate what was very likely already preexisting condition[s] in his shoulders and knees. He has read his compensation manual and it does point out that work-aggravated situations are covered by his [d]isability insurance. It would be my position that, indeed, his shoulder and left knee problem were work aggravated. We do know, however, that his degenerative changes in his knee preexisted [the] work aggravation, but that [the] work aggravation probably culminated in the total knee arthroplasty on the left and shoulder surgery, though, on the left side and the right side; most recent one being in 1997 on the right, with left shoulder in 1996."

By decision dated March 21, 2006, the Office denied appellant's claim after finding that the medical evidence did not establish a condition causally related to the accepted work factors.

On March 24, 2006 appellant requested reconsideration. He submitted a January 14, 2005 report from Dr. Monkman relevant to his right knee osteoarthritis. In a decision dated April 10, 2006, the Office denied merit review of this claim under 5 U.S.C. § 8128. On April 14, 2006 the Office set aside its April 10, 2006 decision as it failed to consider new evidence submitted with the reconsideration request.

On April 14, 2006 the Office referred appellant to Dr. John Seaman, a rheumatologist, and Dr. Joseph Noonan, a Board-certified orthopedic surgeon, for second opinion examinations. The Office requested that the physicians review the statement of accepted facts and provide an opinion regarding his current medical condition and any relationship to employment. In the statement of accepted facts, the Office listed appellant's work duties and described his April 10, 1990 employment injury. In a report dated June 2, 2006, Dr. Seaman and Dr. Noonan discussed appellant's 1990 work injury to his right knee and the gradual onset of pain in his left knee and bilateral shoulders.[2] Appellant related "his left knee problems to some degree to walking on concrete." The physicians listed detailed findings on orthopedic and rheumatologic examination. Dr. Seaman and Dr. Noonan diagnosed a right total knee replacement due to appellant's employment. The physicians also diagnosed status post excision of exostosis or osteochondroma of the right medial femoral condyle, osteoarthritis of the left knee status post arthroscopy and debridement and left knee replacement, bilateral acromioclavicular joint arthritis, status post bilateral distal clavicle excision and acromioplasty of the right shoulder, impingement syndrome and rotator cuff tear of the left shoulder. Dr. Seaman and Dr. Noonan found the above diagnoses "unrelated to the industrial injury on a more-probable-than-not basis." The physicians stated:

> "The only diagnosed condition related to the employment factors is that of the right knee. All of the right knee diagnoses have stemmed from the work-related injury leading to the medial and lateral meniscectomies, partial, of each knee and this is by direct cause. It is not thought that there was any aggravation, precipitation, or acceleration of any other condition, specifically regarding [his] left knee, right shoulder or left shoulder."

[2] The physicians noted that appellant retired from employment in May 2005.

By decision dated July 21, 2006, the Office denied modification of its December 7, 2004 decision.[3]

Appellant appealed to the Board. By order dated December 21, 2006, the Board remanded the case after finding that the record was incomplete.[4] The Board found that the Office did not follow the hearing representative's instructions in his January 24, 2005 decision to obtain evidence listed in its October 8, 2004 development letter.

By letter dated March 14, 2007, the Office noted that it was unable to locate some documents associated with file number 142053510 and requested that appellant submit the information. Appellant submitted the requested evidence on March 27, 2007. The Office associated the evidence from both file numbers.

In a decision dated May 4, 2007, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to show that he sustained a medical condition due to the identified employment factors. The Office found that the opinions of Dr. Noonan and Dr. Seaman represented the weight of the medical evidence and established that appellant had no condition aggravated by employment except for his accepted right knee condition in file number 142053510.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[5] 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 filed within the applicable time limitation; that an injury was sustained while 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.[6] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[7]

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;[8] (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[9] and (3) medical evidence establishing the

[3] In a January 24, 2005 decision, the hearing representative set aside the Office's December 7, 2004 decision.

[4] *T.M.*, Docket No. 06-2044 (issued December 21, 2003).

[5] 5 U.S.C. §§ 8101-8193.

[6] *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *See Ellen L. Noble*, 55 ECAB 530 (2004).

[8] *Michael R. Shaffer*, 55 ECAB 386 (2004).

[9] *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

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.[10]

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 the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[11] The opinion of the physician must be based on a complete factual and medical background of the claimant,[12] must be one of reasonable medical certainty[13] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[14]

When employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation.[15] When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased, even if the employee is medically disqualified to continue employment because of the effect work factors may have on the underlying condition.[16]

ANALYSIS

Appellant attributed his osteoarthritis of the left knee, ankles, feet, hips, shoulders, elbows and wrists to extensive walking and climbing on concrete and operating values and disconnects. The Office accepted the occurrence of the claimed employment factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

On January 10, 2005 Dr. Craig noted that appellant had a history of right knee osteoarthritis due to an employment injury. He also diagnosed left knee osteoarthritis with no evidence of a specific injury. Dr. Craig indicated that the "extensive weight bearing he had to do especially climbing stairs and spending long hours on concrete may have aggravated his [osteoarthritis] symptoms." He also diagnosed rotator cuff tendinitis with impingement of the shoulder and found that lifting and reaching at work may have contributed to appellant's shoulder condition. Dr. Craig's opinion, however, that work factors may have aggravated or contributed to appellant's shoulder and right knee condition is speculative in nature. The Board

[10] *Beverly A. Spencer*, 55 ECAB 501 (2004).

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

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

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

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

[15] *Chris Wells*, 52 ECAB 445 (2001).

[16] *Raymond W. Behrens*, 50 ECAB 221 (1999).

has held that medical opinions which are speculative or equivocal in character have little probative value.[17]

In a report dated August 31, 2005, Dr. Monkman diagnosed impingement of the left shoulder. He found that it was "a good possibility that [appellant's] work situation did aggravate what was very likely already preexisting condition[s] in his shoulders and knees." Dr. Monkman opined that his knee degeneration preexisted any aggravation due to employment but that the work aggravation "probably culminated in the total knee arthroplasty on the left and shoulder surgery. He concluded that appellant's work aggravated his left knee and shoulder condition. Dr. Monkman's opinion that employment factors "probably" aggravated the preexisting degenerative changes in appellant's left knee and his left shoulder impingement is couched in speculative terms and thus of diminished probative value.[18] Further, the physician did not provide any rationale for his causation finding. A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet a claimant's burden of proof.[19]

The record contains evidence that appellant's work exposure did not aggravate any condition other than his right knee osteoarthritis, accepted by the Office under file number 14025310. On June 2, 2006 Dr. Noonan and Dr. Seaman performed second opinion examinations. The physicians diagnosed status post excision of exostosis or osteochondroma of the right medial femoral condyle, osteoarthritis of the left knee status post arthroscopy and debridement and left knee replacement, bilateral acromioclavicular joint arthritis, status post bilateral distal clavicle excision and acromioplasty of the right shoulder and left shoulder impingement syndrome and rotator cuff tear. Dr. Noonan and Dr. Seaman found that only appellant's right knee conditions and total knee replacement were related to employment factors and that the remaining diagnoses were "unrelated to the industrial injury on a more-probable-than-not basis." The physicians further concluded that work factors did not aggravate, precipitate or accelerate a left knee or shoulder condition. Accordingly, appellant has not met his burden of proof to establish that he sustained arthritis of the left knee, feet, hips, shoulders and wrists causally related to factors of his federal employment.

CONCLUSION

The Board finds that appellant has not established that he sustained osteoarthritis of the left knee, shoulders, wrists, hips, ankles and feet causally related to factors of his federal employment.

[17] *L.R. (E.R.)*, 58 ECAB ___ (Docket No. 06-1942, issued February 20, 2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

[18] *Id*.

[19] *See Beverly A. Spencer*, *supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 4, 2007 is affirmed.

Issued: January 16, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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