United States Department of Labor
Employees' Compensation Appeals Board

T.B., Appellant	)	
and	)	**Docket No. 10-1541**
	)	**Issued: June 14, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Lexington, KY, Employer	)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On May 19, 2010 appellant filed a timely appeal from a March 23, 2010 merit decision of the Office of Workers' Compensation Programs and an April 21, 2010 nonmerit decision. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

Appellant, a 65-year-old city carrier, filed a claim (Form CA-1) for an injury to his left knee that allegedly occurred on February 6, 2010 when he was stooping to pick up flat mail off the floor.[2] Dr. Peter A. Coats, a Board-certified internist, diagnosed "[left] knee pain." He questioned whether appellant had a meniscal/medial collateral ligament injury. Dr. Coats excused him from all work through February 10, 2010 due to a "[left] knee injury."

On February 11, 2010 appellant sought treatment at Redpoint Medical, PSC, where he was seen by Heather Pile, a certified physician's assistant.[3] Ms. Pile noted a history of injury on

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant previously injured his left knee in December 1975, and had undergone surgery. He was working in the private sector at the time of his 1975 injury.

[3] Ms. Pile is associated with Dr. Gregory T. Snider, a Board-certified family practitioner specializing in occupational medicine.

February 6, 2010 when appellant reportedly was bending over to pick up mail and heard a "'pop and click'" in his left knee. She diagnosed left knee strain and noted that she could not rule out intraarticular injury. Ms. Pile placed appellant on limited duty with restrictions of no prolonged standing and walking, and no climbing.[4]

The Office of Workers' Compensation Programs subsequently received a March 4, 2010 treatment note from Ms. Pile. Appellant's diagnosis was left knee strain, with a differential diagnosis of medial meniscus tear. He remained on limited duty with a restriction of "[s]it down work only."

On March 16, 2010 the Office spoke with both appellant and Ms. Pile about the need for medical evidence that was signed by a physician. It explained that medical evidence signed by a certified physician assistant would not suffice.[5] Ms. Pile was specifically advised that the treating physician must countersign the evidence.

On March 18, 2010 the Office received additional copies of the February 11 and March 4, 2010 treatment notes from Redpoint Medical, PSC. It also received treatment notes dated February 23, 2010, with a diagnosis of left knee strain and a differential diagnosis of medial meniscus tear. Appellant was noted to have not been working due to restrictions. He was referred for physical therapy and advised to return for follow-up in two weeks. Ms. Pile signed the February 23, 2010 treatment notes. Underneath her signature was a space for "Supervising MD Review," and the typewritten notation "2/24/2010 GTS." The resubmitted February 11 and March 4, 2010 treatment notes also included Dr. Snider's initials --"GTS"-- and the respective review dates of February 12 and March 8, 2010.

By decision dated March 23, 2010, the Office denied appellant's claim because he failed to establish the "'second component'" of fact of injury. It found that there was no injury-related diagnosis on file. Dr. Coats' February 6, 2010 finding of left knee pain was not considered a medical diagnosis. The Office also found that Ms. Pile's diagnosis of left knee strain could not be considered because she was a physician assistant, not a physician. No mention was made of the fact that Dr. Snider reviewed the February 11 and 23, and March 4, 2010 treatment notes.

Appellant requested reconsideration on March 30, 2010, but did not submit any additional medical evidence.[6] Prior to the submission of the reconsideration request, the Office received two March 24, 2010 invoices from Dr. Snider's office (Redpoint Medical, PSC) for services appellant received on February 11 and 23, 2010. The invoices were accompanied by the

[4] Ms. Pile also submitted a February 11, 2010 duty status report (Form CA-17) with a diagnosis of left knee strain. Appellant's restrictions included one to two hours walking, no climbing, no kneeling and no bending/stooping. Ms. Pile also noted "[n]o prolonged walking" and "[m]inimize stairs."

[5] A physician's assistant is not considered a "physician," as that term is defined under 5 U.S.C. § 8101(2). *E.g.*, *Roy L. Humphrey*, 57 ECAB 238, 242 (2005). As such, Ms. Pile is not competent to render a medical opinion for purposes of determining appellant's entitlement to benefits under the Act.

[6] Appellant submitted the appeal request form that accompanied the March 23, 2010 decision and did not otherwise elaborate on the basis for his request for reconsideration.

treatment notes for the corresponding dates. These were the same treatment notes that bore both Ms. Pile's signature and Dr. Snider's initials -- "GTS."

In a decision dated April 21, 2010, the Office denied appellant's request for reconsideration. It acknowledged receipt of the February 11 and 23, 2010 reports "signed by Heather Pile, PA-C," and considered the evidence "irrelevant and repetitious." The Office explained that appellant "did not submit any new medical evidence, namely a detailed narrative report from or signed by a medical doctor ... to support that [he] actually sustained a diagnosed condition in relation to the February 6, 2010 injury." Once again, it failed to acknowledge Dr. Snider's initials on the treatment notes signed by Ms. Pile.

With respect to the issue of whether appellant sustained an injury in the performance of duty on February 6, 2010, the Board finds that the case is not in posture for decision.[7] The Office correctly noted that a physician assistant was not competent to render a medical opinion for purposes of determining entitlement under the Act.[8] However, the Office twice overlooked the fact that Dr. Snider reviewed the reports authored by Ms. Pile on February 11 and 23, and March 4, 2010.[9] Thus, the limitations imposed by 5 U.S.C. § 8101(2) are inapplicable in this instance. Accordingly, the record includes medical evidence referencing a February 6, 2010 date of injury and a diagnosis of left knee strain.

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish his entitlement, the Office shares responsibility in the development of the evidence to see that justice is done.[10] Although Dr. Snider's opinion is insufficient to discharge appellant's burden of proving that the claimed left knee condition is causally related to his federal employment, this evidence is sufficient to require further development of the case record by the Office.[11] On remand, the Office should refer appellant, the case record, and a statement of accepted facts to an appropriate orthopedic specialists for an evaluation and a rationalized medical opinion regarding whether appellant's left knee condition is causally related to his federal employment. After the Office has developed the case record to the extent it deems necessary, a *de novo* decision shall be issued.

[7] The current record includes evidence received after the Office issued its April 21, 2010 decision. The Board's review of a case is limited to the evidence in the record that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c)(1). Consequently, the Board is precluded from reviewing the evidence received after April 21, 2010.

[8] *Supra* note 5.

[9] Although he did not sign the reports, Dr. Snider's full name appears on each of the form reports as well as his typewritten initials -- "GTS" -- and the date he reviewed each report. The fact that a document is unsigned does not, in and of itself, negate its authenticity or reliability. *R.M.*, 59 ECAB 690, 693-94 (2008).

[10] *Horace L. Fuller*, 53 ECAB 775, 777 (2002); *James P. Bailey*, 53 ECAB 484, 496 (2002); *William J. Cantrell*, 34 ECAB 1223 (1983).

[11] *See John J. Carlone*, *supra* note 6; *Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the April 21 and March 23, 2010 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further action consistent with this order of the Board.

Issued: June 14, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board