United States Department of Labor
Employees' Compensation Appeals Board

D.A., Appellant	)	
and	)	**Docket No. 10-2075**
	)	**Issued: June 22, 2011**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Detroit, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 3, 2010 appellant, through his attorney, filed a timely appeal from a June 24, 2010 merit decision of the Office of Workers' Compensation Programs hearing representative denying his traumatic injury claim. 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.

ISSUE

The issue is whether appellant met his burden of proof to establish that his right knee condition is causally related to the July 1, 2009 employment incident.

FACTUAL HISTORY

On July 16, 2009 appellant, then a 38-year-old motor vehicle operator, filed a traumatic injury claim alleging that on July 1, 2009 he sustained an injury to his right knee as a result of

[1] 5 U.S.C. § 8101 *et seq.*

walking up the stairs at work. He stopped work on July 1, 2009. In a supplemental signed personal statement, appellant reported that on July 1, 2009 at approximately 5:45 a.m. he walked up eight flights of stairs at work because the power was out in his building. He explained that around the fourth floor he twisted his knee, but continued to climb the stairs even though he experienced significant pain.

Appellant was initially examined at the occupational health department at his work. In a July 1, 2009 medical note, a nurse practitioner and Dr. Ramesh Padiyar, an internist, reported that appellant was walking up the stairs because the power was out when he felt pain in his right knee. Dr. Padiyar did not report a fall or history of trauma. He noted that appellant's right knee was not red, swollen, or bruised and recommended light duty. In a July 2, 2009 follow-up report, Dr. Padiyar reviewed appellant's x-ray, which did not reveal any evidence of an acute fracture, dislocation, or abnormality and authorized appellant to return to full duty.

In a July 14, 2009 medical report, Dr. Vasilios Moutzouros, a Board-certified orthopedic surgeon, reported that appellant's right knee had been painful since June 30, 2009 when he was going up a flight of stairs and felt a pop over his right knee. He reviewed appellant's medical history and noted that appellant was initially seen a few years ago for knee difficulties, which was diagnosed as significant patellar tendinitis and resulted in a left knee arthroscopy. The examination revealed that appellant was unable to do a straight leg raise and had a positive defect at the proximal patellar tendon with significant swelling and effusion in the knee. Dr. Moutzouros recommended a magnetic resonance imaging (MRI) scan examination because he believed appellant may have sustained a patellar tendon rupture.

On July 27, 2009 appellant underwent an MRI scan examination of his right knee interpreted by Dr. Mark Diamond, a Board-certified diagnostic radiologist. The MRI scan revealed a large joint effusion with the patellofemoral compartment, significant artilage loss medially and a full thickness cartilage defect within the weight-bearing portion of the femoral condyle. Dr. Diamond noted that the MRI scan suggested a fat pad impingement syndrome, patellofemoral degenerative change and somewhat focal, large chondral defect from the medial femoral condylo.

In a July 21, 2009 medical report, Dr. Robert A. Teitge, a Board-certified orthopedic surgeon, confirmed that appellant was seen for an acute right knee injury and provided a history of injury. He stated that on July 1, 2009 appellant walked up eight flights of stairs and realized that his knee was swollen when he reached the top of the staircase. Appellant further informed him that on July 4, 2009 he went to the hospital emergency room because his knee was still swollen and painful. Dr. Teitge conducted a physical examination and reviewed appellant's MRI scan report. He observed a moderate fragment off the center of the medial femoral condyle articular surface and diagnosed appellant delamination with a defect in the center of articular surface. Dr. Teitge recommended an arthroscopy for removal of loose body and, in an August 13, 2009 letter, he authorized appellant to undergo right knee arthroscopy and excused him from work for four weeks.

On October 15, 2009 the Office advised appellant that the evidence was insufficient to support that the alleged July 1, 2009 event occurred as alleged and requested additional information. It asked him to clarify what happened on July 1, 2009 which caused his alleged

knee injury and to provide a statement from any witnesses. The Office further requested a comprehensive medical report from appellant's treating physician which should include a history of injury, treatment and examination results, diagnosis and a doctor's opinion, with stated medical reasons, explaining how the alleged July 1, 2009 event caused or aggravated his knee condition. It specifically requested for the physician to explain the relationship between appellant's preexisting degenerative condition and the alleged July 1, 2009 knee injury.

Appellant responded by providing a July 4, 2009 MRI scan report interpreted by Dr. Matthew Rheinboldt, a Board-certified diagnostic radiologist, who observed a large effusion and focal irregularity of the lateral tibial plateau and mild spurring at the anterior intercondylar eminence and minimal patellar pole spurring. Dr. Rheinboldt diagnosed appellant with large effusion, but he could not rule out second fracture lateral tibial plateau with the possibility of accompanying internal ligamentous derangement.

In a November 12, 2009 decision, the Office denied appellant's traumatic injury claim on the grounds of insufficient evidence establishing that he sustained an injury in the performance of duty. It determined that the factual evidence failed to demonstrate that the alleged July 1, 2009 employment incident occurred as alleged and to explain the mechanism of injury for what caused appellant's alleged knee condition.

On November 24, 2009 appellant, through his representative, requested a telephone hearing. Prior to the hearing, he provided a January 6, 2010 signed personal statement. Appellant stated that on July 1, 2009 at approximately 4:45 a.m., he had to climb approximately 100 to 110 stairs because the building did not have power. As he was walking up the winding stairs, he felt his knee give out and heard a pop, causing him pain, but continued walking up the stairs to get to his office.

Appellant also provided a July 4, 2009 emergency room report by Dr. Tony Kanluen, Board-certified in emergency medicine, who reviewed appellant's medical history and reported that he injured his right knee five days ago at home when he ran up eight flights of stairs and experienced pain in his right knee. Upon physical examination, Dr. Kanluen observed some swelling and mild spurring at the anterior intercondylar eminence and minimal patellar pole. X-rays also revealed a large effusion and focal irregularity of the lateral tibial plateau. Dr. Kanluen ultimately diagnosed appellant with a large right knee traumatic effusion but could not rule out second fracture lateral. He also resubmitted the July 4, 2009 MRI scans results interpreted by Dr. Rheinboldt.

In an April 1, 2010 letter, Dr. Angelia Mosley-Williams, a Board-certified internist who specializes in rheumatologist, stated that appellant was initially seen on August 29, 2007 for knee pain and was eventually diagnosed with osteochondritis dessicans of his knees. She reported that he continued to complain of right knee pain and reported that on July 1, 2009 his knee gave out while climbing stairs at work due to severe pain. Dr. Mosley-Williams reviewed appellant's MRI scan reports and noted a large chondral defect and osteoarthritis of the patellofemoral joints. She further explained that according to rheumatology literature his right knee gave out because knees with osteoarthritis do give way during weight-bearing activities. Dr. Mosley-Williams also noted that appellant's pain would increase due to the progression of his osteoarthritis.

On April 13, 2010 a telephone hearing was held with appellant's attorney and a representative from the employing establishment. Appellant stated that in August 2007 he was diagnosed with early onset of osteoarthritis in his knees, but that this knee condition was not work related. He eventually underwent surgery on his left knee in January 2008. Appellant then explained that on July 1, 2009 he climbed about 100 winding stairs to the fourth floor because the power was out. He began to feel right knee pain around the second floor but continued to walk up the stairs when the pain became so severe that his knee gave out. Appellant did not fall, but continued to climb the stairs to reach his office despite the pain.

Appellant further described the medical treatment he received. On July 1, 2009 he was examined by the employee health unit at work, who recommended that he return to light-duty work to see if the swelling in his knee would go down and authorized him to full duty on July 2, 2009. When appellant's knee pain did not improve by July 4, 2009, he went to the emergency room where an x-ray was taken and fluid was drained from his knee. The Office hearing representative pointed out that Dr. Kanluen stated in his emergency room report that appellant injured his knee at home on June 30, 2009 and that the medical evidence failed to contain a physician's opinion establishing whether and how the July 1, 2009 event caused or aggravated his knee condition. He emphasized the fact that because appellant had a preexisting knee condition, the Office needed a definitive opinion and explanation as to how walking up the stairs on July 1, 2009 caused the new injury. Appellant refuted that the accurate date of injury was July 1, 2009 at work, and he did not know why Dr. Kanluen noted an incorrect date. His representative further asked to hold the record open for 30 days in order to provide the necessary medical evidence. No additional information was received.

By decision dated June 24, 2010, the Office affirmed the November 12, 2009 Office denial with modification. It determined that the evidence was sufficient to establish fact of injury, but the record was void of sufficient medical evidence demonstrating that appellant's right knee condition was causally related to the July 1, 2009 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Act[2] has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative and substantial evidence[3] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.[5]

[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[6] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[7] An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.[8]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.[9] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident.[10] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[11]

In addition, under the Act, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.[12] When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.[13] If the employment exposure causes a permanent condition, the employee may be entitled to continuing compensation.[14]

ANALYSIS

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a knee condition causally related to walking up several flights of stairs at work on July 1, 2009. The Office accepted that the July 1, 2009 employment incident occurred as alleged and that appellant sustained a knee condition. The issue is whether the medical evidence

[6] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[7] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[9] *Paul E. Thams*, 56 ECAB 503 (2005).

[10] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[11] *B.B.*, 59 ECAB 234 (2007); *Victor J. Woodhams*, *supra* note 10 at 352; *D.S.*, Docket No. 09-860 (issued November 2, 2009).

[12] *Raymond W. Behrens*, 50 ECAB 221, 222 (1999); *James L. Hearn*, 29 ECAB 278, 287 (1978).

[13] *Id.*

[14] *James C. Ross*, 45 ECAB 424, 429 (1994); *Gerald D. Alpaugh*, 31 ECAB 589, 596 (1980).

establishes that appellant's knee condition was causally related to the accepted employment incident.

The record establishes that appellant suffers from a preexisting knee condition that is not work-related and underwent a left knee arthroscopy in January 2008. In an April 1, 2010 letter, Dr. Mosley-Williams stated that she initially saw appellant on August 29, 2007 for osteochondritis dessicans of his knees and related that he experienced severe knee pain on July 1, 2009 while climbing stairs at work. She reviewed his MRI scan results and noted a large chondral defect and osteoarthritis of the patellofemoral joints. Dr. Mosley-Williams explained that appellant's right knee gave out because knees with osteoarthritis give way during weight-bearing activities. Although she provides an accurate history of injury, she did not offer any medical rationale explaining how climbing up the stairs at work would aggravate appellant's preexisting osteoarthritis or cause any new injury. Dr. Mosley-Williams did not provide a medical opinion which sufficiently described or explained the medical process through which the July 1, 2009 work event would have caused or aggravated the claimed injury.[15]

After the July 1, 2009 employment incident, appellant was first examined by the occupational health department at his work. Dr. Padiyar stated that appellant was walking up the stairs and felt pain in his right knee. He observed no redness, swelling or bruising and recommended light duty. In a July 2, 2009 follow-up report, Dr. Padiyar observed no swelling or bruising and noted that x-rays did not reveal a fracture, dislocation or articular abnormalities. While he provides an accurate history of injury on July 1, 2009 appellant was walking up the stairs at work, he does not claim that this event caused any diagnosed medical condition or aggravated appellant's preexisting knee problems.[16] Dr. Padiyar also does not provide a firm medical diagnosis, but only states that appellant experienced pain, which is not a compensable medical diagnosis.[17] Thus, these reports are insufficient to establish causal relationship.

Appellant was also examined in the emergency room by Dr. Kanluen. In a July 4, 2009 hospital record, Dr. Kanluen stated that appellant complained of a right knee injury that occurred five days ago at home when he ran up eight flights of stairs. X-rays revealed a large effusion and focal irregularity of the lateral tibial plateau. Dr. Kanluen noted that appellant sustained a right knee traumatic effusion. Appellant alleges, however, that he sustained an injury on July 1, 2009 at work, not at home five days earlier on June 30, 2009, as Dr. Kanluen stated. Similarly, in a July 14, 2009 report, Dr. Moutzouros reported the date of injury as June 30, 2009 and explained that appellant felt a pop as he was going up the flight of stairs. While both doctors provided a firm medical diagnosis, they also listed an incorrect date of injury, and thus, did not provide an accurate history of the employment injury as appellant alleged. Without a correct history of injury, these reports are not based upon a complete and factual background and are thus, of limited probative value in establishing appellant's claim.[18]

[15] *J.Z.*, 58 ECAB 529 (2007); *see also Thomas L. Hogan*, 47 ECAB 323 (1996).

[16] *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

[17] *Robert Broome*, 55 ECAB 339, 342, (2004); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

[18] *See M.W.*, 57 ECAB 710 (2006); *John W. Montoya*, 54 ECAB 306 (2003); *B.H.*, Docket No. 10-907 (issued November 9, 2010).

Appellant also provided a July 21, 2009 medical report from Dr. Teitge, who stated that on July 1, 2009 appellant's knee became swollen after walking up eight flights of stairs at work. He conducted a physical examination and reviewed appellant's MRI scan results. Dr. Teitge diagnosed appellant with delamination with a defect in the center of articular surface and recommended a right knee arthroscopy. He, however, does not provide any opinion on the cause of appellant's diagnosed knee condition. Dr. Teitge only states that appellant's knee was swollen when he reached the top of the staircase without explaining how walking up the stairs resulted in appellant's knee condition. He also fails to mention appellant's preexisting knee condition. As medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value, Dr. Teitge's report fails to establish causal relationship in this case.[19] In addition, appellant's July 4 and 17, 2009 MRI scan results interpreted by Dr. Rheinboldt and Dr. Diamond do not provide any opinion regarding the etiology of appellant's knee condition, and are likewise, insufficient to meet his burden of proof.

On October 15, 2009 the Office advised appellant of the medical evidence needed to establish his claim. Furthermore, the Office hearing representative again informed him that he needed to provide a medical opinion from his physician explaining how walking up the stairs caused a new knee injury or contributed to his preexisting knee condition. Appellant failed to submit such probative medical opinion in this case and, thus, did not meet his burden of proof to establish his claim.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a knee injury on July 1, 2009.

[19] *A.D.*, 58 ECAB 149 (2006); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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