United States Department of Labor
Employees' Compensation Appeals Board

A.N., Appellant	)	
and	)	**Docket No. 10-2150**
	)	**Issued: June 6, 2011**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Westbury, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 25, 2010 appellant filed a timely appeal from May 10 and July 15, 2010 decisions of the Office of Workers' Compensation Programs. 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.

ISSUES

The issues are: (1) whether appellant met his burden to establish that he sustained a traumatic injury in the performance of duty on January 2, 2010; and (2) whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128(a) without further merit review.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 2, 2010 appellant, then a 52-year-old air traffic control specialist, filed a traumatic injury claim alleging that he injured his left knee on that day when he slipped on a step and fell forward striking it on the top of a platform. He did stop work.

The Office informed appellant in a March 24, 2010 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit medical reports describing the history of injury, examination and test findings, diagnosis, course of treatment, and prognosis and offering a physician's reasoned opinion as to how the January 2, 2010 employment incident caused a left knee injury.

In a March 26, 2010 note, Dr. Charles J. Bleifeld, a Board-certified orthopedic surgeon, related that appellant injured his knee on January 2, 2010. Appellant missed steps in a dark corridor at work, landed on his knee and "may have heard something or felt something tear." On physical examination, Dr. Bleifeld observed medial joint line tenderness, swelling and pain on full flexion of the left knee. X-rays were normal. Dr. Bleifeld diagnosed a probable torn left medial meniscus and recommended a magnetic resonance imaging (MRI) scan.

An April 19, 2010 MRI scan report from Dr. Mindy S. Pfeffer, a diagnostic radiologist, exhibited a horizontal, intermediate signal intensity band in the posterior horn and body of the left medial meniscus that was consistent with intrameniscal degeneration, but did not exclude "superimposed horizontal peripheral tear of the posterior horn of the medial meniscus near the capsular margin." Dr. Pfeffer also found a heterogeneous signal of the distal quadriceps tendon that was consistent with tendinosis and degenerative changes within the patellofemoral and medial joint compartments.

In an April 23, 2010 follow-up note, Dr. Bleifeld noted appellant's complaints of mechanical left knee pain. He advised that the MRI scan showed a torn left medial meniscus. Dr. Bleifeld examined appellant and observed medial joint line pain and tenderness. Appellant subsequently requested arthroscopic surgery.

By decision dated May 10, 2010, the Office denied appellant's claim, finding the medical evidence insufficient to establish that the January 2, 2010 incident caused or contributed to the diagnosed left medial meniscal tear.

Appellant requested reconsideration on May 26, 2010 and provided copies of Dr. Pfeffer's April 19, 2010 MRI scan report. The Office denied the request in a July 15, 2010 decision on the grounds that he did not submit new and relevant evidence warranting further merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking compensation under the Act has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,[2]

[2] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

including that he is an "employee" within the meaning of the Act and that he filed his claim within the applicable time limitation.[3] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the 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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[5]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.[6]

ANALYSIS -- ISSUE 1

The evidence supports that on January 2, 2010 appellant slipped on a step at the workplace, fell toward the top of a platform and struck his left knee. Appellant did not provide sufficient medical evidence establishing that this employment incident caused a left medial meniscal tear or other left knee injury.

In a March 26, 2010 note, Dr. Bleifeld related that appellant injured his left knee on January 2, 2010 when he missed steps and landed on it. He diagnosed a probable left medial meniscal tear pending an MRI scan. In an April 23, 2010 follow-up note, Dr. Bleifeld noted appellant's status and diagnosed a torn left medial meniscus but he did not address the cause of appellant's left knee condition. While the March 26, 2010 report provides some support for causal relationship, Dr. Bleifeld did not provide medical rationale explaining how the January 2, 2010 work event pathophysiologically caused the injury such as addressing how striking the knee on a platform would cause the type of meniscal tear that was diagnosed.[7] A medical opinion not fortified by medical rationale is of little probative value.[8]

[3] *R.C.*, 59 ECAB 427 (2008).

[4] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *T.H.*, 59 ECAB 388 (2008).

[6] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[7] *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

[8] *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

The radiologist, Dr. Pfeffer, referenced a number of issues regarding appellant's left knee including degenerative changes and a torn meniscus. The MRI scan report is of diminished probative value as she did not offer any opinion regarding the cause of the condition.[9] In the absence of well-reasoned medical opinion explaining causal relationship, appellant failed to meet his burden.

Appellant argues on appeal that the medical evidence was sufficient to establish that he sustained a left medial meniscal tear. The Board notes that there is no dispute that he has a torn meniscus. The defect in appellant's claim is that the medical evidence does not provide reasoning, or rationale, to explain why the torn meniscus was caused by the January 2, 2010 incident.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[10] the Office's regulations provide that the evidence or argument submitted by a claimant must either: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[11] Where the request for reconsideration fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[12]

ANALYSIS -- ISSUE 2

The Office's May 10, 2010 merit decision denied the claim on the basis that the medical evidence did not establish that the January 2, 2010 employment incident caused or contributed to a left knee injury. Appellant requested reconsideration on May 26, 2010 and submitted copies of Dr. Pfeffer's April 19, 2010 MRI scan report. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[13] Moreover, appellant neither contended that the Office erroneously applied or interpreted a specific point of law nor advanced a relevant legal argument not previously considered by the Office. As he did not submit new evidence or legal argument satisfying any of the three regulatory criteria for reopening a claim, the Office properly found that he was not entitled to further merit review of his claim.

[9] *See J.F.*, Docket No. 09-1061 (issued November 17, 2009).

[10] 5 U.S.C. § 8128(a).

[11] *E.K.*, Docket No. 09-1827 (issued April 21, 2010). *See* 20 C.F.R. § 10.606(b)(2).

[12] *L.D.*, 59 ECAB 648 (2008). *See* 20 C.F.R. § 10.608(b).

[13] *Edward W. Malaniak*, 51 ECAB 279 (2000).

CONCLUSION

The Board finds that appellant did not establish that he sustained a traumatic injury in the performance of duty on January 2, 2010. The Board also finds that the Office properly denied appellant's requests for reconsideration under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the July 15 and May 10, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 6, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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