

**United States Department of Labor
Employees' Compensation Appeals Board**

W.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Providence, RI, Employer**

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**Docket No. 12-1844
Issued: April 1, 2013**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 29, 2012 appellant, through his counsel, filed a timely appeal from a July 31, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 he sustained a right knee and back injury in the performance of duty on March 16, 2010.

FACTUAL HISTORY

On March 18, 2010 appellant, then a 58-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on March 16, 2010 he sustained a back strain and meniscus

¹ 5 U.S.C. § 8101 *et seq.*

sprain moving equipment on a scale. He stopped work on March 17, 2010 and notified his supervisor on March 18, 2010.

By letter dated March 24, 2010, the employing establishment controverted the claim. It stated that appellant did not timely notify his supervisor when the alleged incident occurred on March 16, 2010 despite being aware of the procedures for filing due to previous workers' compensation claims. The employing establishment stated that he called in sick for his next scheduled shift on March 17, 2010. Appellant informed his manager that his knee buckled when pushing a hamper, but that he did not realize he was injured until he was at home. The employing establishment also noted that he was self-employed installing heavy equipment such as heating and air conditioning units which could be the cause of his injury.

In a March 16, 2010 hospital discharge sheet, appellant was seen for back pain, sprains, fracture and bruises and was referred to a specialist for follow-up care. In a back to work note of the same date, John Zorsch, a physician's assistant (PA), reported that appellant could return to work on March 19, 2010.

By letter dated March 25, 2010, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was asked to respond to the questions provided in the letter within 30 days.

In a March 19, 2010 prescription note, Rebecca Grazboro, a registered nurse, reported that appellant would undergo a work capacity evaluation the following week.

In a March 25, 2010 attending physician's report (Form CA-20), Tracy Martin, a registered nurse, noted that appellant could not return to work due to a right knee sprain and low back strain. She check marked the form to reflect that his condition was caused from pushing a cart at work. Ms. Martin listed that appellant had a preexisting back injury involving a fractured vertebrae from a helicopter crash.

In a March 25, 2010 diagnostic report, Dr. David E. Gambill, a Board-certified radiologist, reported that a magnetic resonance imaging (MRI) scan of the right knee revealed no acute change with spurring of the patella.

In progress notes dated April 1 to 15, 2010, Dr. Surender Singh, a Board-certified in family medicine, reported that appellant complained of pain after pushing a loaded mail cart at work, which caused him to twist his low back and right knee. Appellant sought immediate treatment at the emergency room on March 16, 2010. Upon review of diagnostic testing and physical examination, Dr. Singh diagnosed low back pain, tear of the right knee medial cartilage and sprain of right knee. In an April 1, 2010 CA-20 form, Dr. Singh checked the box marked "yes" as to whether appellant's condition was caused or aggravated by his employment activity. He cited no history of a preexisting injury and concluded that appellant could not return to work until further notice.

By decision dated April 29, 2010, OWCP denied appellant's claim finding that the factual evidence did not establish that the March 16, 2010 incident occurred as alleged.

On May 4, 2010 appellant requested review of the written record before the Branch of Hearings and Review.

In narrative statements dated May 4 to August 30, 2010, appellant related that he was at work on March 16, 2010 and had to weigh a hamper which appeared to be overweight. He attempted to move the hamper onto the scale but one of the wheels was flat. Appellant continued to push the hamper until he finally got it on the scale, causing his back to hurt. Once he got the hamper onto the scale, he felt a burning sensation in his knee. Appellant stated that he took medicine to relieve the pain and finished his shift. He woke up the next day with a swollen right knee and back pain and sought emergency medical treatment. Although appellant had a side business for heating and air conditioning installments, his job entailed paperwork and he did not do any of the heavy installments. He noted an employment-related back injury 10 years prior and stated that there had been no incidents with his back until March 16, 2010.²

In an April 3, 2010 report, Dr. James P. Strain, a Board-certified diagnostic radiologist, reported that an MRI scan of the lumbar spine showed disc space narrowing and degenerative changes with no fracture. He also noted moderately severe compression deformity of the T11 vertebral body.

In an April 5, 2010 report, Dr. Daryl R. Parker, a Board-certified diagnostic radiologist, reported that an MRI scan of the right knee showed a tear of the posterior horn of the medial meniscus, joint effusion, focal artifact/signal loss and slight bony spurring along the inferior and superior aspects of the patella. He noted that plain film radiographs from March 25, 2010 indicated small metallic densities in the soft tissues anterolateral to the distal femoral metaphysis.

In a May 7, 2010 diagnostic report, Dr. Ahmed Elaini, a Board-certified radiologist, reported that an MRI scan of the lumbar spine revealed multilevel degenerative changes most pronounced at L4-5 and L5-S1 where disc protrusion was noted and incompletely visualized loss of height at T11 with nonacute appearance.

In medical reports dated April 22 to May 24, 2010, Dr. James E. Devin, a Board-certified orthopedic surgeon, reported that appellant injured his back and right knee on March 16, 2010 when he was pushing an 1100-pound hamper. Upon physical examination and review of diagnostic testing, he diagnosed a back sprain at work aggravating preexisting chronic back pain, aggravation of lumbar disc disease with protrusion, sciatica, right knee torn meniscus work injury and knee sprain. Dr. Devin also diagnosed appellant with back sprain, aggravation of lumbar disc disease, sciatica and a right knee torn meniscus. He opined that appellant was unable to perform his job duties and recommended surgery and physical therapy.

In a June 2, 2010 surgical report, Dr. Arthur J. Bowman, a Board-certified orthopedic surgeon, reported that appellant had internal derangement of the right knee and that an MRI scan suggested a torn medial meniscus. Apparently, appellant injured his knee at work and the knee felt unstable. He underwent arthroscopy and debridement of the medial femoral condyle without complication. In follow up notes dated June 24 to July 13, 2010, Dr. Bowman stated that appellant was restricted from working and recommended physical therapy treatments.

² The Board notes that there is no further information regarding any prior injury and OWCP claim.

By decision dated December 16, 2010, a hearing representatives affirmed the April 29, 2010 decision, finding that the evidence failed to establish that the March 16, 2010 incident occurred as alleged.

By letter dated November 21, 2011, appellant through counsel, requested reconsideration of the December 16, 2010 OWCP decision. He resubmitted medical evidence previously of record together with new medical reports from Dr. Bowman. On January 7, 2011 Dr. Bowman stated that appellant was under his care and had no reported problem with his knee prior to the March 2010 injury.

In an October 6, 2011 medical report, Dr. Bowman stated that appellant had arthroscopic surgery of the right knee. Appellant informed him that he had no problems with his knee until he sustained a fall in March 2010. Dr. Bowman stated that the “assumption has been made that is when his knee problem occurred.” Appellant was referred after he sought emergency room and physical therapy treatment. Dr. Bowman stated that, during his last examination on January 7, 2011, appellant was doing well other than the sensation of occasional mechanical clicking in the knee. Physical findings were otherwise unremarkable with no pain and swelling.

By decision dated July 31, 2012, OWCP affirmed the December 16, 2010 decision finding that the evidence of record failed to establish that the incident occurred as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA; 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 or specific condition for which compensation is claimed are causally related to the employment injury.³ 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.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP 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.⁵ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he or she sustained an injury in the performance of duty he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also

³ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Elaine Pendleton*, *supra* note 3.

establish that such event, incident or exposure caused an injury.⁶ Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation is causally related to the accepted injury.⁷

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁸

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁹ The opinion of the physician must be based on 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹⁰

ANALYSIS

The Board finds that appellant failed to establish that he sustained a right knee and back injury in the performance of duty on March 16, 2010.

Appellant must establish all of the elements of his claim in order to prevail. He must prove his employment, the time, place and manner of injury, a resulting personal injury and that her injury arose in the performance of duty. In its July 31, 2012 decision, OWCP found that appellant did not establish that the incident occurred at the time, place and in the manner alleged. The Board finds, however, that the evidence of record is sufficient to establish that the March 16, 2010 incident occurred, as alleged.

⁶ See generally *John J. Carlone*, 41 ECAB 354 (1989); see also 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). See *Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

⁷ *Elaine Pendleton*, supra note 3.

⁸ *Betty J. Smith*, 54 ECAB 174 (2002).

⁹ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

¹⁰ *James Mack*, 43 ECAB 321 (1991).

Appellant alleged that on March 16, 2010 he was pushing a heavy hamper filled with mail onto a scale which had a flat wheel. This caused him to push harder, which resulted in back pain and a pop in the right knee pain with burning sensation. Appellant's CA-1 form noted that he sustained a back strain and meniscus sprain on March 16, 2010 after moving equipment on a scale. His CA-1 form and narrative statements dated March 18, May 4 and 24 and August 30, 2010, have all been consistent with one basic account of the mechanism of the employment incident. Moreover, appellant sought medical treatment on the same date of the employment incident, notified his supervisor on the following date and filed his CA-1 form only two days after the employment incident.

The Board notes that Dr. Bowman's October 6, 2011 medical report stated that appellant had no problems with his knee until he sustained a fall in March 2010. However, this does not cast such inconsistencies as to doubt the manner in which the incident occurred. The medical reports from Dr. Singh and Dr. Devin are consistent in noting that appellant experienced right knee and back pain after pushing a heavy hamper on March 16, 2010. Dr. Singh and Dr. Devin treated appellant soon after the March 16, 2010 employment incident. Appellant consistently maintained that he was pushing a heavy hamper filled with mail when he sustained his injury. Moreover, Dr. Bowman's June 2, 2010 and January 2, 2011 reports only note a work-related injury and make no reference to a fall in March 2010. Although his October 6, 2011 report noted that appellant sustained a fall in March 2010, the factual evidence of record overwhelmingly and consistently states that he was pushing a heavy hamper on March 16, 2010, indicating that perhaps Dr. Bowman mistakenly noted a fall instead. Thus, the Board finds that, given the above referenced evidence, appellant has alleged with specificity that the incident occurred at the time, place and in the manner alleged.¹¹

In progress notes dated April 1 to 15, 2010, Dr. Singh reported that appellant complained of low back pain and right knee pain after pushing a loaded mail cart at work which caused him to twist his low back and right knee. Upon review of diagnostic testing and physical examination, he diagnosed low back pain, tear of the right knee medial cartilage and sprain of right knee. In medical reports dated April 22 to May 24, 2010, Dr. Devin reported that appellant injured his back and right knee on March 16, 2010 when he was pushing an 1100-pound hamper. He diagnosed back sprain at work aggravating preexisting chronic back pain, aggravation of lumbar disc disease with protrusion, sciatica, right knee torn meniscus work injury and knee sprain. In a June 2, 2010 operative report, Dr. Bowman diagnosed torn medial meniscus and internal derangement of the right knee.

While the reports of Dr. Singh, Dr. Devin and Dr. Bowman establish a diagnosis of back sprain, right knee torn meniscus, aggravation of lumbar disc disease and right knee sprain, they are not rationalized as to the issue of causal relation. Dr. Bowman's October 6, 2011 report contains an incorrect history of the employment incident, noting that appellant sustained a fall in March 2010. Moreover, his report failed to state any opinion on the cause of appellant's injury. Dr. Singh's reports noted appellant's complaints of right knee and back pain from pushing a loaded mail cart at work. In an April 1, 2010 CA-20 form report, Dr. Singh checked the box marked "yes" when asked if he believed appellant's condition was caused or aggravated by his

¹¹ See *Willie J. Clements*, 43 ECAB 244 (1991).

employment activity of pushing carts loaded with mail on March 16, 2010. The Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the work conditions caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship.¹² Furthermore, Dr. Singh's report had an inaccurate medical history as he noted no preexisting injury to which appellant himself has attested to. While Dr. Devin provided an accurate account of the March 16, 2010 employment incident, he failed to provide any explanation regarding how the incident accepted in this case caused or contributed to appellant's right knee and back injury. His brief statement that appellant suffered a back sprain at work and had a right knee torn meniscus work injury is equivocal in nature and of limited probative value.¹³

The noted physicians did not provide a detailed discussion of appellant's medical history, merely recounted the incident as described by appellant and did not offer a rationalized opinion on the issue of causal relationship.¹⁴ Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁵ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹⁶ The reports of Dr. Singh, Dr. Devin and Dr. Bowman do not meet that standard and are insufficient to meet appellant's burden of proof.

The remaining medical evidence of record is also insufficient to establish causal relationship between appellant's right knee and back injury and the March 16, 2010 employment incident. Nurses, physician's assistants, physical and occupational therapists are not "physicians" as defined by FECA, their opinions regarding diagnosis and causal relationship are of no probative medical value.¹⁷ While the diagnostic reports provided by Dr. Gambill, Dr. Strain, Dr. Parker and Dr. Elaini provided a diagnosis with radiographic findings, they failed to state any opinion on causal relationship.¹⁸ Thus, the reports are of limited probative value.

While appellant has established that the March 16, 2010 incident occurred as alleged, that he was pushing a hamper onto a scale, he did not submit rationalized medical evidence to

¹² See *Calvin E. King, Jr.*, 51 ECAB 394 (2000); see also *Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

¹³ *S.W.*, Docket No. 08-2538 (issued May 21, 2009).

¹⁴ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹⁵ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁶ See *Lee R. Haywood*, 48 ECAB 145 (1996).

¹⁷ 5 U.S.C. § 8101(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. See also *Roy L. Humphrey*, 57 ECAB 238 (2005).

¹⁸ *Supra* note 15.

establish that his back sprain, right knee torn meniscus, aggravation of lumbar disc disease or right knee sprain were caused or aggravated by the accepted employment incident. In the instant case, the record is without rationalized medical evidence establishing a causal relationship between the March 16, 2010 employment incident and appellant's right knee and back injury. Thus, appellant has failed to establish his burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his right knee and back injury is causally related to the accepted March 16, 2010 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2012 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: April 1, 2013
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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