United States Department of Labor
Employees' Compensation Appeals Board

D.D., Appellant	)	
and	)	**Docket No. 13-710**
	)	**Issued: April 24, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Port Reading, NJ, Employer	)	

Appearances:
Robert Campbell, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On February 5, 2013 appellant, through his representative, filed a timely appeal from an October 9, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 has established an injury in the performance of duty on December 1, 2009.

FACTUAL HISTORY

On December 4, 2009 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 1, 2009 at 1:30 p.m. his right knee gave out while walking in the performance of duty. The record indicates that he has a prior claim for a right

[1] 5 U.S.C. § 8101 *et seq.*

knee injury in 1989. On a prior appeal, the Board remanded the case to administratively combine the two case files.[2]

Appellant received treatment on December 2, 2009. A form report of that date includes a history that his right knee buckled while walking at work.[3] The report noted that appellant had prior knee surgeries and the diagnosis was right knee sprain/strain. The record also contains a CA-16 authorization for medical treatment form dated December 1, 2009.

By letter dated December 9, 2009, OWCP requested that appellant submit additional factual and medical evidence. In a treatment note dated December 11, 2009, Dr. Janine Jamieson, an osteopath, reported that appellant had three prior right knee arthroscopic surgeries in 1989 and 1990. She stated that appellant was walking on December 1, 2009 and sustained pain in the posterior aspect of the knee. Dr. Jamieson provided results on examination, diagnosed right knee arthritis and indicated that appellant was given a cortisone injection. An x-ray report dated December 11, 2009 diagnosed degenerative joint disease.

By decision dated January 12, 2010, OWCP denied the claim for compensation. It found the factual basis for the claim was unclear or unknown.

Appellant requested a hearing before an OWCP hearing representative. He submitted a form report (CA-20) dated December 18, 2009. Dr. Jamieson provided a history that appellant felt pain while walking on December 1, 2009 and diagnosed degenerative arthritis of the right knee. She checked a box "yes" that the condition was employment related. Appellant also submitted additional treatment notes from Dr. Jamieson through February 24, 2010. A hearing was held on April 8, 2010.

By decision dated June 22, 2010, the hearing representative affirmed the January 12, 2010 decision. The hearing representative found that appellant had stated "no event had actually occurred" such as a slip and fall, or stepping off a curb in an unusual manner, and therefore "there is no specific event to establish the fact of injury." The hearing representative noted that appellant had a 1989 claim and may wish to pursue compensation through that claim.[4]

On March 8, 2011 appellant, through his representative, requested reconsideration. Appellant argued that he had aggravated his right knee condition on December 1, 2009. In a report dated August 30, 2010, Dr. Jamieson reported that appellant stated that he injured his right knee on December 1, 2009 when he was walking at work and his knee buckled and since then has had increasing pain. She stated that appellant had pain with range of motion to the knee and once again x-rays showed progression of his arthritis. Dr. Jamieson opined that appellant's right knee arthritis was directly related to the 1989 knee injury, and the "new injury back in December 2009 has aggravated his arthritis to his right knee." She stated that walking five to eight hours per day could definitely aggravate the preexisting condition.

[2] Docket No. 12-136 (issued June 12, 2012).

[3] The physician's signature is illegible.

[4] The record indicates appellant filed a recurrence of disability claim for disability commencing December 1, 2009.

By decision dated May 24, 2011, OWCP reviewed the case on its merits and denied modification. The Board set aside this decision in its June 12, 2012 order, directing OWCP to combine the 1989 and 2009 case records.

Pursuant to the 1989 claim, OWCP referred appellant for a second opinion examination by Dr. Ken Heist, an osteopath, (master file xxxxxx493) who was asked to provide an opinion as to any current disability casually related to the 1989 injury. In a report dated June 28, 2011, Dr. Heist provided a history and results on examination. The history noted a May 9, 1989 incident where appellant slipped on a wet floor and injured his right knee. Dr. Heist also stated in the history of injury that appellant "reinjured his right knee on December 1, 2009 while walking at work when his knee gave way." He diagnosed degenerative joint disease of the right knee and opined that appellant would need a total knee replacement in the future.

By decision dated October 9, 2012, OWCP reviewed the case on its merits and denied modification. It found there was no evidence that a specific incident occurred as alleged.

LEGAL PRECEDENT

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[5] The phrase "sustained while in the performance of duty" in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of an in the course of employment."[6] An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.[7] 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. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[8]

OWCP's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.[9] In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other

[5] 5 U.S.C. § 8102(a).

[6] *Valerie C. Boward*, 50 ECAB 126 (1998).

[7] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

[8] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (July 2000).

traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.[10]

Rationalized medical opinion evidence is medical evidence based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[11]

ANALYSIS

Appellant filed a claim for an injury on December 1, 2009. He stated on the claim form that he was walking and felt pain and weakness in his right knee. OWCP has found that the factual element of the claim has not been established. The October 9, 2012 OWCP decision states that there was "no specific incident" alleged. The June 22, 2010 hearing representative states that there was "no specific event" alleged, noting that appellant did not state that he fell or stepped off a curb. Appellant's allegation did identify a specific event, walking, at a specific time and place on December 1, 2009 at approximately 1:30 p.m. while on his mail route. There was no contrary evidence presented that appellant was not engaged in the activity alleged. He provided a consistent history of the allegation to physicians. A claimant does not have to identify a specific unusual trauma such as falling or twisting to establish the factual basis for a traumatic injury claim.[12]

The Board finds that appellant has alleged an employment incident on December 1, 2009, and there is no probative contrary evidence. The issue therefore is whether the medical evidence is sufficient to establish a diagnosed injury casually related to the employment incident. As noted above, the evidence must be rationalized medical evidence. Because the allegation is that an injury occurred while walking on December 1, 2009, the physician must clearly explain how this caused an injury.

A review of the medical evidence does not establish causal relationship in this case. There are brief form reports dated December 2, 2009 that contain a diagnosis of a knee

[10] *Id.*

[11] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

[12] *See, e.g., J.M.*, Docket No. 09-1805 (issued June 22, 2010) (claimant was walking up stairs and felt groin pain); *F.F.*, Docket No. 08-1246 (issued October 7, 2008) (claimant alleged an injury from rising out of his chair).

sprain/strain, without providing an opinion on causal relationship with the December 1, 2009 incident.[13]

Dr. Jamieson diagnosed degenerative arthritis, and in an August 30, 2010 report stated that a "new injury" in December 2009 had aggravated a preexisting arthritis. She does not provide a complete history of the incident or any medical rationale to explain how walking on December 1, 2009 aggravated an arthritis condition. Dr. Jamieson referred to walking five to eight hours per day, which is not the claim for injury on December 1, 2009 that is presented in this case.

In a June 28, 2011 report, Dr. Heist briefly stated in his history that appellant had reinjured his knee while walking on December 1, 2009, without further discussion. The Board notes that although he was a second opinion physician, the referral was pursuant to the 1989 claim and he was not asked to provide an opinion with respect to a December 1, 2009 injury. The brief statement of history provided is not a rationalized medical opinion that walking on December 1, 2009 caused a diagnosed injury. The June 28, 2011 report is of little probative value with respect to establishing an injury on December 1, 2009.

On appeal, appellant's representative argues that the report from Dr. Heist is sufficient to establish the claim.[14] As noted above, the Board finds the report from Dr. Heist is of limited probative value to the issue presented. Appellant may submit new evidence or argument with a written application for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not establish an injury in the performance of duty on December 1, 2009.

[13] The Board notes that a properly executed Form CA-16 that authorizes medical treatment as a result of an employee's claim for an employment-related injury creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *Tracey P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c). The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form.

[14] Appellant also argues that OWCP did not properly combine the case files as directed by the Board on the prior appeal. The case records were administratively combined and the Board has reviewed both case files. In this regard the Board notes that it does not appear that OWCP issued a final decision with respect to a claim for a recurrence of disability on December 1, 2009.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 9, 2012 is modified to reflect that appellant established an employment incident on December 1, 2009 and affirmed as modified.

Issued: April 24, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board