United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	**Docket No. 13-1287**
	)	**Issued: September 23, 2013**
and	)	
	)	
U.S. POSTAL SERVICE, POST OFFICE, Piedmont Cutoff, AL, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 7, 2013 appellant filed a timely appeal from merit decisions dated December 18, 2012 and April 23, 2013 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 met his burden of proof to establish a right knee injury causally related to factors of his federal employment.

On appeal, appellant contends that the dates stated in his claim were estimated dates since no formal report had been submitted at the time of injury.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 11, 2012 appellant, then a 58-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that on May 2, 2011 he first became aware of his torn meniscus of the right knee and first realized that his condition was caused by walking six to seven hours a day, three days a week at work. Initially, two to three days a week he would go home with knee pain. When appellant rode a couple of days a week, he had no knee problem. He was unable to keep up with walking 110 paces per minute due to his pain. Appellant stated that he did not seek medical treatment until August 11, 2011 because initially his problem was minor. He stopped work on September 26, 2012. Appellant reported his condition to a supervisor on the date he filed his claim.

In an undated narrative statement, appellant described his claimed injury. In March 2011, he was loading a long-life vehicle (LLV) for a city route. Appellant was standing with his knees against the rear bumper when he reached back to grab a tray of mail. He thought he may have overextended his right knee. Appellant experienced pain for several days, but it seemed to have improved. Shortly, thereafter, he noticed pain on his walking days at work. Appellant had been walking at work for almost 18 years. He could not recall what he was doing one week prior to the March 2011 incident, but it could not have been much since he had heart surgery in January 2010. In an October 11, 2012 statement, appellant related that he had foot surgery and knee problems, that he had been out of work for six weeks due to those conditions and that his work performance had suffered since his pain had returned. He was unable to complete certain walking routes.

In an undated medical report, Dr. William N. Haller, III, an attending Board-certified orthopedic surgeon, advised that appellant had a medial meniscus tear of the right knee. He noted that appellant was a mail carrier who performed his route on foot. Dr. Haller stated that, since appellant provided no specific time of injury, he was unable to relate the diagnosed condition directly to his job. However, he believed that the physical nature of his job would aggravate this problem.

The employing establishment controverted the claim. In an October 12, 2012 letter, Belinda Maddox, a human resource management specialist, contended that appellant was not required to walk the entire time on his route. Appellant had to drive between parking points and was allowed two 10-minute breaks. He described a traumatic injury that occurred in March 2011. Appellant provided a date of injury as May 2, 2011 on his Form CA-2. The medical evidence stated that he could not provide a specific date of injury and it failed to identify employment factors that caused or contributed to his claimed injury. Appellant was involved in a hobby or activity that required repetitive use of his knee.

In an October 12, 2012 e-mail, Joel Cook, a customer service supervisor, stated that appellant complained that the pain in his knee, back and feet was caused by his work. However, he could not recall whether appellant's conditions were work related. Mr. Cook believed that appellant informed him that he had bone spurs. He listed appellant's routes which involved standing one to two hours and minimal walking one to six hours. Mr. Cook stated that, depending on his assigned route, appellant did not walk the entire time, noting that he drove between parking points and to and from his routes and was allowed two 10-minute breaks. The

employing establishment submitted appellant's employment records, which included a description of a city carrier position that required the delivery and collection of mail on foot or by vehicle.

By letter dated October 29, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It gave him 30 days to submit a factual statement detailing the employment-related activities that contributed to his condition and activities outside his federal employment and a medical report from an attending physician which included an explanation of how his work activities caused, contributed to or aggravated his medical condition. OWCP also requested that appellant clarify whether he sustained a traumatic injury or an occupational disease and provided definitions of both. Appellant did not respond.

In a December 18, 2012 decision, OWCP denied appellant's claim, finding insufficient evidence to establish that he experienced the employment factor alleged to have occurred and that he sustained any diagnosed condition causally related to the alleged employment factor.

By letter dated January 18, 2013, appellant requested reconsideration.

In reports dated July 20, 2011 through November 1, 2012 and in an undated report, Dr. Haller advised that appellant sustained a meniscus tear of the right knee while working as a mail carrier that was treated with a medial meniscectomy.

An August 31, 2012 report authenticated by Dr. Homer A. Spencer, a Board-certified radiologist, stated that a magnetic resonance imaging scan of appellant's right knee showed an oblique tear of the posterior horn of the medial meniscus and a small osteochondral defect involving the more medial aspect of the lateral femoral condyle. There was no evidence of other significant bony or soft tissue pathology.

In an April 23, 2013 decision, OWCP denied modification of the December 18, 2012 decision, finding that appellant had not sustained a work-related injury as claimed. The factual evidence was inconsistent or unclear as to how his knee condition developed as a result of his employment. The medical reports did not provide a specific job-related mechanism of injury.

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 timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.[4] To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[5]

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[6] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.[7]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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.[8]

ANALYSIS

The Board finds that the factual evidence does not sufficiently establish the work factor that caused appellant's right knee condition.

As noted, an employee's factual statement regarding how an occupational disease occurred must be consistent with the surrounding facts and circumstances and his subsequent course of action. Late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty and failure to obtain medical treatment may, if otherwise unexplained, refute this statement.[9] Here, appellant alleged in a Form CA-2 that on May 2, 2011 he became aware of his torn meniscus of the right knee and realized that his condition resulted from walking six to seven hours a day, three days a week while working as a city letter carrier.

[4] *S.P.*, 59 ECAB 184, 188 (2007).

[5] *R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

[6] *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

[7] *Betty J. Smith*, 54 ECAB 174 (2002).

[8] *I.J.*, 59 ECAB 408 (2008); *supra* note 3.

[9] *Supra* note 7.

However, in an undated narrative statement, he alleged that he sustained a right knee injury in March 2011 while reaching to grab a tray of mail to load into an LLV. This statement is inconsistent with appellant's original assertion in the Form CA-2 that he became aware of his condition and its relationship to his federal employment on May 2, 2011. The case record shows that he did not seek medical treatment until August 11, 2011[10] and did not file a claim until October 11, 2012, more than one year following the onset of symptoms. Appellant related that on October 11, 2012 he was out of work for six weeks due to not only knee problems, but also foot surgery. Dr. Haller, an attending physician, advised that he was unable to relate appellant's diagnosed medial meniscus tear of the right knee directly to his employment because appellant did not provide a specific time of injury. The employing establishment challenged appellant's claim contending that he was not required to walk his entire route. It stated that he drove between parking points and to and from his routes and he was given two 10-minute breaks. Mr. Cook stated that, although appellant told him that he had bone spurs and complained that his knee, back and feet pain was caused by his work, he could not remember whether appellant's conditions were work related.

The Board finds that appellant has not presented a clear and consistent factual account of how and when his injury occurred, which casts doubt upon the validity of his factual claim. The Board finds, therefore, that he failed to establish an occupational disease claim.[11] Since appellant did not establish the factual component of fact of injury, it is not necessary for the Board to consider the medical evidence with respect to causal relationship.[12]

On appeal, appellant contended that the dates stated in his claim were estimated dates as no formal report was submitted at the time of injury. As stated, the factual evidence does not sufficiently establish the work factors that caused his right knee condition.

Appellant may submit new evidence or argument with a written request 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 meet his burden of proof to establish that he sustained a right knee injury causally related to factors of his federal employment.

[10] The Board notes appellant's account that he did not seek medical treatment until August 11, 2011 because initially his knee problem was minor.

[11] *O.W.*, Docket No. 09-2110 (issued April 22, 2010).

[12] *D.F.*, Docket No. 10-1774 (issued April 18, 2011).

ORDER

IT IS HEREBY ORDERED THAT the April 23, 2013 and December 18, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 23, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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