United States Department of Labor
Employees' Compensation Appeals Board

D.R., Appellant	)	
and	)	**Docket No. 15-1764**
	)	**Issued: December 9, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Springfield, IL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 21, 2015 appellant filed a timely appeal from the July 16, 2015 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.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish an injury causally related to factors of his federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

[2] On appeal, appellant submitted new evidence. The Board cannot consider this evidence on appeal, however, as its review of the case is limited to the evidence of record which was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c)(1); *see Steven S. Saleh*, 55 ECAB 169 (2003).

FACTUAL HISTORY

On April 16, 2015 appellant, then a 49-year-old carrier technician, filed an occupational disease claim (Form CA-2) alleging that he sustained inflamed cartilage under his knee caps in the performance of duty. He explained that he walked for six hours a day and the stress of walking had taken its toll on both knees. Appellant stated that he first became aware of the injury and its relation to his work on April 16, 2015. He did not stop work.

By letter dated May 7, 2015, OWCP informed appellant of the type of evidence needed to support his claim and requested that he submit such evidence within 30 days. It particularly requested that he have his physician provide an opinion, supported by a medical explanation, as to how work activities caused or aggravated his claimed condition.

In a March 16, 2015 report, Dr. Winston Townsend, a Board-certified internist, noted that appellant was seen for a re-check of the right knee. He advised that the pain in the right lateral area of the knee that was painful on his last visit had resolved and he was now experiencing pain on top of the knee that was constant. Dr. Townsend noted that the discomfort was exacerbated by movement and walking steps. He further noted that appellant was employed as a medic and walked several miles daily. Dr. Townsend diagnosed right knee pain. Right knee x-rays were negative for significant arthritis. Dr. Townsend noted that he believed appellant had chondromalacia that would be treated with anti-inflammatory medication and a brace. He stated, "obviously, his occupation precludes him from resting as he should."

In a May 21, 2015 report, Dr. Townsend noted that appellant presented with a recurrence of right knee pain since stopping Ibuprofen prescribed previously for the pain. He advised that appellant indicated that his pain was mostly around the patella area. Dr. Townsend indicated that appellant had ongoing right knee pain and discomfort intermittently for the last six months. He noted that x-rays were nondiagnostic. Dr. Townsend related that appellant had transient relief with anti-inflammatory medication. He also advised that appellant wore a brace at work and worked a full schedule as an "EMT/paramedic." Dr. Townsend explained that appellant denied any specific injury or trauma and reported previously having a lot of pain which was assumed to be a ligamentous strain. He indicated that the condition had resolved and he now had discomfort under the patella. Dr. Townsend diagnosed right knee pain and recommend a magnetic resonance imaging (MRI) scan.

A June 3, 2015 MRI scan of the right knee read by Dr. Gregory Gregg, a Board-certified diagnostic radiologist, revealed a small partial patellar tendon tear or patellar sleeve abnormality and small joint effusion. Dr. Gregg found no meniscal tear.

In a June 4, 2015 report, Dr. Rodney Herrin, a Board-certified orthopedic surgeon, noted that appellant presented with a right knee problem and related the pain to his work activities. He advised that appellant worked as a letter carrier and walked approximately five miles a day. Dr. Herrin indicated that appellant did not remember a specific injury. He advised that appellant had mostly anterior knee pain and did not mention swelling. Dr. Herrin advised that appellant related that it started bothering him in November or December of last year and he took some Ibuprofen. He advised that the MRI scan revealed a small partial patellar tendon tear or sleeve abnormality and small joint effusion. Dr. Herrin examined appellant and diagnosed joint pain, in

the knee. He advised that appellant related his problems with the right knee to his work activities. Dr. Herrin advised that he appeared to have infrapatellar tendinitis with the possibility of a small partial tear. He recommended physical therapy, for the eccentric strengthening of the right knee and advised that appellant was going to continue working regular job duties. Dr. Herrin noted that appellant had active problems that included ankle sprain, difficulty walking, joint effusion of the lower leg, joint pain in the knee, pain in the ankle, and a sprain of the calcaneofibular ligament of the ankle. OWCP also received physical therapy notes and requests for physical therapy.

By decision dated July 16, 2015, OWCP denied appellant's claim as fact of injury had not been established. It found that appellant did not submit any medical evidence containing a firm medical diagnosis in connection with the claimed injury, work factors, or events.

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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/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 upon a traumatic injury or an occupational disease.[4]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 of the claimant, 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.[5]

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

[5] *Id.*

ANALYSIS

Appellant alleged that he developed a right knee condition due to daily walking as part of his work as a carrier technician. The evidence supports that he walked at work as part of his carrier technician duties. However, appellant submitted insufficient medical evidence to establish a firm medical diagnosis that was caused or aggravated by these activities or any other specific factors of his federal employment.

The evidence submitted by appellant includes reports from Dr. Townsend. In a March 16, 2015 report, he noted that appellant was experiencing constant pain on top of the right knee with the discomfort exacerbated by movement and walking steps. Dr. Townsend also noted that appellant was employed as a medic and walked several miles daily and diagnosed right knee pain. He indicated that appellant could not rest his knee due to his occupation. However, Dr. Townsend did not clearly indicate that work activities as a carrier technician caused or aggravated a diagnosed condition.[6]

On May 21, 2015 Dr. Townsend noted that appellant presented with a reoccurrence of right knee pain and discomfort intermittently for the last six months. He advised that appellant wore a brace at work and worked a full schedule as an "EMT/paramedic." Dr. Townsend explained that appellant denied any specific injury or trauma and reported previously having a lot of pain which was assumed to be a ligamentous strain. He indicated that the condition had resolved, but he now had discomfort under the patella. Dr. Townsend diagnosed right knee pain. The Board has held, however, that pain is generally considered a symptom and not a firm medical diagnosis.[7] This report does not indicate that appellant's activities as a carrier technician caused or aggravated a specific condition. 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.[8] These reports are of limited probative value.

In a June 4, 2015 report, Dr. Herrin, indicated that appellant presented with a problem with his right knee and related the pain to his work activities. He diagnosed knee joint pain and advised that appellant appeared to have infrapatellar tendinitis with the possibility of a small partial tear. Medical opinions based on an incomplete history or which are speculative or equivocal are of diminished probative value.[9] Dr. Herrin noted that appellant worked as a letter carrier and walked about five miles a day. The Board notes that Dr. Herrin indicated that appellant related his knee to his work activities. Dr. Herrin does not provide his own opinion on

[6] Dr. Townsend's reports indicate that appellant works as a paramedic. It is unclear whether appellant has a separate job as a paramedic or if Dr. Townsend's reports are based on an erroneous factual history. Dr. Townsend's reports do not indicate awareness that appellant works as a carrier technician. The Board has held that a physician's opinion must be based upon a complete and accurate medical and factual background of the claimant. *Conard Hightower*, 54 ECAB 796 (2003).

[7] *P.S.*, Docket No. 12-1601 (issued January 2, 2013); *Robert Broome*, 55 ECAB 339 (2004).

[8] *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[9] *L.G.*, Docket No. 09-1692 (issued August 11, 2010); *Cecelia M. Corley*, 56 ECAB 662 (2005).

causal relationship.[10] Neither Dr. Herrin's report nor Dr. Townsend's reports provide medical reasoning, or rationale, explaining why appellant's work activity caused or aggravated a particular diagnosed condition.[11]

OWCP also received diagnostic reports to include a June 3, 2015 MRI scan of the right knee. However, this evidence is of limited probative value as it does not address whether the work activities caused or aggravated a diagnosed condition.

OWCP received physical therapy notes and requests for physical therapy. Health care providers such as nurses, acupuncturists, physician assistants, and physical therapists are not physicians under FECA.[12] Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.[13]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[14] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[15]

As there is no reasoned medical evidence explaining how appellant's employment duties caused or aggravated a firm medically diagnosed condition involving his knees, appellant has not met his burden of proof.

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 has not met his burden of proof to establish an injury causally related to factors of his federal employment.

[10] *See A.M.*, Docket No. 10-205 (issued October 5, 2010) (a physician's opinion must be independent from a claimant's belief regarding causal relationship).

[11] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[12] 5 U.S.C. § 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrist, dentists, clinical psychologists, optometrist, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See B.B.*, Docket No. 09 1858 (issued April 16, 2010); *Roy L. Humphrey*, 57 ECAB 238 (2005).

[13] *Jane A. White*, 34 ECAB 515, 518 (1983). *See* 5 U.S.C. § 8101(2).

[14] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[15] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board