United States Department of Labor
Employees' Compensation Appeals Board

P.H., Appellant	)	
and	)	**Docket No. 16-0654**
	)	**Issued: July 21, 2016**
DEPARTMENT OF THE AIR FORCE, AIR FORCE SPACE COMMAND, Cape Canaveral, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 2, 2016[1] appellant filed a timely appeal from an August 11, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from August 11, 2015, the date of OWCP's last decision, was February 7, 2016. As this fell on a Sunday, the appeal would have been due to the next business day which was Monday, February 8, 2016. Since using February 19, 2015, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is February 2, 2016, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant met his burden of proof to establish right knee conditions causally related to a September 25, 2014 employment incident.

On appeal, appellant contends that OWCP did not properly consider all of the medical evidence submitted and argues that if he had prior damage to his right knee his physicians would not have let him run the day of the injury.

FACTUAL HISTORY

On October 1, 2014 appellant, a 63-year-old police officer, filed a traumatic injury claim (Form CA-1), alleging that he sustained a right knee injury on September 25, 2014 as a result of performing mandatory exercise testing. He was running the 300-meter dash as part of the Air Force Physical Agility Test (AFPAT) at the time of injury. Appellant stopped work on September 26, 2014 and returned on September 29, 2014. The employing establishment agreed that he was in the performance of duty at the time of the incident.

In an October 10, 2014 letter, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a position description and an AFPAT worksheet dated September 25, 2014, indicating that on that date he performed sit-ups and push-ups, but did not finish the 300-meter or 1.5-mile run due to right knee pain. He also submitted an April 10, 2013 x-ray of the right knee, which demonstrated large suprapatellar joint effusion and trace spurring about the bony patella.

An OWCP Form CA-16, authorization for examination, was issued by the employing establishment on September 25, 2014. Appellant was authorized to visit Health First Urgent Care in Cocoa Beach, Florida. In a September 25, 2014 report, Dr. Sara J. Switzer, a Board-certified internist at Health First, noted seeing him for a right knee injury that day. She diagnosed right knee internal derangement, prescribed a right knee brace, and released appellant to modified work on September 29, 2014 with the following restrictions: no prolonged standing or walking; no climbing, bending, or stooping; sitting jobs only. On October 25 and 28, 2014 Dr. Switzer rechecked his right knee internal derangement and opined that he was unable to return to work.

In a November 5, 2014 report Dr. Ramesh Girjashanker, a Board-certified internist, asserted that appellant suffered an injury at work on September 25, 2014 as he was running on a wet surface and slipped and injured his right knee. He found that a magnetic resonance imaging (MRI) scan of the right knee revealed evidence of torn meniscus and strain anterior cruciate ligament (ACL) insertion at the tibia. Dr. Girjashanker reported that appellant continued with pain and discomfort, especially walking and standing. He diagnosed right knee meniscal tear and internal derangement. Dr. Girjashanker released appellant to modified work on November 10, 2014 with the following restrictions: sitting jobs only.

On November 10, 2014 Dr. Hani H. El-Kommos, a Board-certified orthopedic surgeon, indicated that appellant would be scheduled for a right knee arthroscopy in the next couple of weeks.

By decision dated November 18, 2014, OWCP denied the claim because appellant had failed to establish that the alleged work incident occurred as alleged.

On December 8, 2014 appellant requested an oral hearing before the Branch of Hearings and Review and submitted a September 25, 2014 attending physician's report from Dr. Switzer. He diagnosed a suspected right knee internal derangement as a result of slipping on wet pavement while performing a physical agility test for employment. A physical examination revealed right knee effusion, positive anterior drawer sign, lateral tenderness, and medial tenderness. On October 3, 2014 Dr. Switzer found no improvement and appellant had advised having to do quite a bit of walking at work, which was very painful. She released him to modified work on October 6, 2014 with the following restrictions: sitting jobs only. On November 28, 2014 Dr. Switzer opined that appellant was unable to work due to constant pain and inability to walk very far. Upon physical examination, she found right knee decreased range of motion, effusion, lateral tenderness, medial tenderness, and a positive Lachman and McMurray test.

An x-ray of the right knee dated October 22, 2014 revealed evidence of severe sprain of the tibial insertion of the ACL, tear of both the medial and lateral meniscus, solitary focus of chondromalacia patella along the upper pole at lateral patellar facet, and high probability benign cystic change in the lateral aspect of the lateral femoral condyle.

In a November 5, 2014 report, Dr. Girjashanker opined that appellant sustained an injury to his right knee on September 25, 2014 while he was in training for physical fitness at work. A physical examination revealed limping, mild-to-moderate pain at extreme flexion or extension. Dr. Girjashanker diagnosed right knee meniscal tear and internal derangement. He released appellant to sitting jobs only, effective November 10, 2012.

On November 10, 2014 Dr. El-Kommos reported that on October 25, 2014 appellant was performing an agility test and ever since that date he started complaining of significant pain and discomfort in his right knee. He found that x-rays of the right knee showed good joint space and that it was well preserved. A physical examination revealed marked tenderness along the medial joint line and a positive McMurray test. Dr. El-Kommos found that Lachman and drawer tests were negative. He recommended a knee arthroscopy. On May 6, 2015 Dr. El-Kommos reported that appellant had gout and when he visited the emergency room they aspirated his knee and found uric acid.

A telephonic hearing was held before an OWCP hearing representative on June 26, 2015. Appellant provided testimony and the hearing representative held the record open for 30 days for the submission of additional evidence. He testified that he previously had restrictions for his right knee in 2010 when it was swollen with gout.

Appellant submitted an April 4, 2013 report from Dr. Anh N. Chau, a Board-certified family practitioner, who diagnosed sinusitis and knee pain. Dr. Chau advised that appellant

reported right knee swelling for six days. Appellant also resubmitted an x-ray of the right knee dated in which Dr. Chau had found a large amount of swelling in the knee and had referred appellant to an orthopedic specialist.

By decision dated August 11, 2015, an OWCP hearing representative found that appellant had established an incident occurring in the performance of duty, but failed to submit medical evidence sufficient to establish a causal relationship between his right knee conditions and the September 25, 2014 employment incident.

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 of FECA, that an injury[3] was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. 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 sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his condition relates to the employment incident.[5]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[6]

[3] OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

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

[5] *Id.*

[6] *Id.*

ANALYSIS

OWCP has accepted that the employment incident of September 25, 2014 occurred at the time, place, and in the manner alleged. The issue is whether appellant's right knee conditions resulted from the September 25, 2014 employment incident. The Board finds he has not met his burden of proof to establish causal relationship.

In her September 25, 2014 report, Dr. Switzer diagnosed right knee internal derangement as a result of slipping on wet pavement while doing a physical agility test for employment that day. Upon physical examination, she found right knee effusion, positive anterior drawer sign, lateral tenderness, and medial tenderness. On October 3, 2014 Dr. Switzer asserted that appellant had no improvement and was having to do quite a bit of walking at work, which was very painful. She released him to modified work on October 6, 2014 with the following restrictions: sitting jobs only. On November 28, 2014 Dr. Switzer opined that appellant was unable to work due to constant pain and inability to walk very far. Examination revealed right knee decreased range of motion, effusion, lateral tenderness, medial tenderness, and a positive Lachman and McMurray test. The Board finds that Dr. Switzer has failed to provide sufficient medical rationale explaining the mechanism of how running a 300-meter dash at work on September 25, 2014 caused appellant's right knee condition. Dr. Switzer noted that appellant's condition occurred while he was at work, but such generalized statements do not establish causal relationship as they merely repeat his allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the diagnosed conditions.[7] The need for rationale is particularly important as the evidence of record indicates that appellant had a preexisting right knee condition from at least 2013. Dr. Switzer's opinion was based, in part, on temporal correlation. However, the Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[8] Dr. Switzer did not otherwise sufficiently explain how the diagnostic testing and examination findings led her to conclude that the September 25, 2014 incident at work caused or contributed to the diagnosed conditions.

On November 5, 2014 Dr. Girjashanker asserted that appellant was running on a wet surface during training for physical fitness at work on September 25, 2014 when he slipped and injured his right knee. An MRI scan of the right knee revealed evidence of torn meniscus and strained ACL insertion at the tibia and a physical examination revealed limping, mild-to-moderate pain at extreme flexion or extension. Dr. Girjashanker diagnosed right knee meniscal tear and internal derangement. He noted that appellant's conditions occurred while he was at work, but as noted above, such generalized statements do not establish causal relationship.[9] Dr. Girjashanker did not provide sufficient medical rationale explaining how appellant's new or preexisting right knee conditions were caused or aggravated by running a 300-meter dash at

[7] *See K.W.*, Docket No. 10-98 (issued September 10, 2010).

[8] *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

[9] *Supra* note 7.

work on September 25, 2014. Again, the need for rationale is particularly important as the evidence of record indicates that appellant had a preexisting right knee condition.

Dr. El-Kommos asserted that on October 25, 2014 appellant was doing an agility test and ever since that date appellant had significant pain and discomfort in his right knee. He attributed appellant's condition to an October 25, 2014 incident. Dr. El-Kommos did not provide any medical rationale explaining how appellant's running of a 300-meter dash at work on September 25, 2014 caused or aggravated his right knee condition. OWCP has not accepted an October 25, 2014 work incident in this case.

Other medical evidence of record, including diagnostic testing reports, is of limited probative value and insufficient to establish the claim as it does not specifically address whether appellant's diagnosed conditions are causally related to the September 25, 2014 work incident.[10] Dr. Chau's reports from April 2013 are also of limited probative value as they predate the claimed injury.

On appeal, appellant contends that OWCP did not properly consider all of the medical evidence submitted and argues that if he had prior damage to his right knee his physicians would not have let him run the day of the injury. The Board finds that OWCP properly reviewed all of the medical evidence of record. As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to the September 25, 2014 employment incident, he has failed to meet his burden of proof to establish a claim for compensation.

The Board also notes that the employing establishment issued appellant a Form CA-16 on September 25, 2014 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.[11] Although OWCP denied appellant's claim for an injury, it did not address whether he is entitled to reimbursement of medical expenses pursuant to the Form CA-16. Upon return of the case record, OWCP should further address this matter.

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 right knee conditions causally related to the accepted September 25, 2014 employment incident.

[10] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (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).

[11] *See D.M.*, Docket No. 13-535 (issued June 6, 2013). *See also* 20 C.F.R. §§ 10.300, 10.304.

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 21, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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