United States Department of Labor
Employees' Compensation Appeals Board

T.L., Appellant	)	
and	)	**Docket No. 16-1273**
	)	**Issued: November 18, 2016**
DEPARTMENT OF DEFENSE, DEFENSE COMMISSARY AGENCY, Seaside, CA, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 6, 2016 appellant filed a timely appeal from a May 12, 2016 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 disability on or after December 20, 2014 causally related to his accepted March 23, 2014 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The case record provided to the Board includes evidence received after OWCP issued its May 12, 2016 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP rendered its final decision. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On March 26, 2014 appellant, then a 56-year-old meat cutter, filed a traumatic injury claim (Form CA-1) alleging that he injured his left knee on March 23, 2014 when he fell on a wet floor at work.

Dr. Robert F. Lawson, a Board-certified orthopedic surgeon, examined appellant on March 23, 2014 and noted complaints of left knee pain following a slip and fall at work. Appellant reported that he slipped on a wet floor in a meat cooler and twisted his left knee as he fell. Dr. Lawson diagnosed employment-related left knee strain -- medial collateral ligament (MCL) and medial meniscus injury with significant motion decrease. He advised that appellant could perform modified work as of March 26, 2014, and could resume his regular work as of March 31, 2014.[3]

A March 24, 2014 left knee x-ray revealed no evidence of fracture or other acute osseous pathology, probable joint effusion, and moderate degenerative narrowing (osteoarthritis) of the medial knee joint space.

In April 2014, OWCP accepted appellant's claim for left knee lateral collateral ligament (LCL) strain.

In a report dated June 5, 2014, Dr. Donald C. Pompan, a Board-certified orthopedic surgeon, mentioned the March 23, 2014 employment incident and a prior diagnosis of left knee valgus injury. He also noted that appellant currently complained of right knee pain, both medially and laterally. Dr. Pompan diagnosed right knee strain and possible MCL strain. In a July 8, 2014 follow-up report, he added possible medial meniscus tear to the list of right knee diagnoses.

A July 8, 2014 right knee magnetic resonance imaging (MRI) scan revealed a horizontal tear of the body and posterior horn of the medial meniscus.

In an August 22, 2014 report, Dr. Pompan noted that appellant reported injuring both knees on March 23, 2014, noting that the right knee also twisted when he fell. He indicated that appellant complained of right knee pain and the diagnostic testing showed a meniscal tear. Dr. Pompan further noted that there was some confusion from his own notes as to which knee had been injured, but it seemed that both knees were injured on March 23, 2014.

A September 24, 2014 left knee MRI scan showed a large radial tear in the body of the medial meniscus versus prior partial meniscectomy with degenerative fraying of the anterior and posterior horn.

On October 28, 2014 Dr. Pompan diagnosed bilateral knee meniscal tears and placed appellant on limited duty.[4] He also recommended right knee arthroscopy. In response, the

[3] Appellant stopped work on March 23, 2014 and received continuation of pay from March 27 through 30, 2014.

[4] Dr. Pompan imposed a 10- to 20-pound lifting restriction and limited squatting, kneeling, crawling, climbing, standing, and walking.

employing establishment provided appellant a temporary assignment as a modified meat cutting worker, which he accepted on November 19, 2014.

Appellant stopped work entirely on December 20, 2014 and filed a claim for compensation (Form CA-7) for temporary total disability through January 10, 2015.[5]

In a report dated March 2, 2015, Dr. Pompan noted that appellant was totally disabled due to morbid obesity as well as meniscal tears. In an April 13, 2015 report, he repeated the diagnoses noted in his March 2, 2015 report and added bilateral knee tendinitis. In a report dated April 27, 2015, Dr. Pompan repeated the diagnoses in his April 13, 2015 report.

In a May 21, 2015 report, Dr. Jeffrey D. Carter, a Board-certified orthopedic surgeon, noted a history of a March 23, 2014 injury where appellant "fell on wet floor, bent left knee sideways, extend right knee…." Appellant currently complained of right knee pain. Dr. Carter diagnosed right medial meniscus tear, knee effusion, and chondromalacia patellae, and recommended arthroscopic surgery. He indicated that appellant's injury was caused by impact with the floor on March 23, 2014.

In a May 27, 2015 decision, OWCP denied appellant's disability claim for the period December 11, 2014 to January 10, 2015 on the basis that the evidence of record did not establish a causal relationship between the accepted March 23, 2014 employment injury and total disability for the period claimed. It found that opinions by treating physicians were not rationalized as to either an additional injury-related right knee condition or whether the accepted left knee injury disabled appellant from work as of December 11, 2014.

On June 6, 2015 appellant requested a review of the written record by an OWCP hearing representative.

On June 18, 2015 OWCP referred appellant to Dr. Bruce R. Huffer, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated July 20, 2015, Dr. Huffer noted a history of a fall on a wet floor on March 23, 2014 with a twisting injury to the left knee. He further noted that appellant reported performing light-duty "sit down" work prior to stopping work in December 2014. The left knee showed minimal effusion, some pain on McMurray's test, no ligament instability, and negative Lachman's and drawer tests. Dr. Huffer opined that the March 23, 2014 work incident caused a left knee strain while other conditions disclosed by diagnostic testing preexisted March 23, 2014. He posited that appellant's right knee conditions were not causally related to the March 23, 2014 work injury, noting that right knee symptoms were not reported until some months following such injury. Dr. Huffer opined that appellant could work eight hours per day with restrictions and also noted that it was unclear why he had to stop working limited duty in December 2014 due to the work-related left knee strain. He indicated that appellant could return to the sit-down type of work he had been performing up to December 2014.

[5] Appellant also claimed three hours of wage-loss compensation for December 18, 2014.

By decision dated November 12, 2015, the hearing representative affirmed OWCP's May 27, 2015 decision. Dr. Huffer's July 20, 2015 report represented the weight of the medical evidence.

In a January 12, 2016 report, Dr. Carter diagnosed right and left knee derangement of the posterior horns of the medial meniscuses due to an old tear or injury. He opined that appellant had bilateral chronic medial meniscus tearing and noted, "I cannot find any reason for the severity of his knee complaints or that they are work related…."

In a January 25, 2016 report, Dr. Pompan diagnosed bilateral knee degenerative meniscal tears, bilateral pes anserine tendinitis, and morbid obesity and deconditioning. He opined that appellant remained disabled to activities requiring repetitive squatting, kneeling, walking on uneven ground, heavy repetitive pushing or pulling, or climbing.

On February12, 2016 appellant requested reconsideration of his claim.

In a May 12, 2016 decision, OWCP denied modification of its November 12, 2015 decision.

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 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.[6] In general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.[7] This meaning, for brevity, is expressed as disability for work.[8]

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.[9]

[6] *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

[7] *See* 20 C.F.R. § 10.5(f).

[8] *Roberta L. Kaaumoana,* 54 ECAB 150 (2002); *see also A.M.,* Docket No. 09-1895 (issued April 23, 2010).

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

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish total disability on or after December 20, 2014 due to his March 23, 2014 work injury. Appellant failed to submit medical evidence containing a rationalized opinion relating disability on or after December 20, 2014 to that work-related injury.

In reports from early 2015, Dr. Pompan suggested a work-related cause for appellant's disability, namely bilateral meniscal tears and bilateral knee tendinitis which he felt were related to the March 23, 2014 work injury. However, his reports are not based on an accurate history as Dr. Pompan essentially restated appellant's belief that a right knee condition arose as a consequence of the accepted left knee injury. Appellant presented to Dr. Pompan with conflicting histories of a fall on the left knee with compensatory right knee pain or, alternately, a right knee injury with compensatory left knee pain, or that both knees twisted in the March 23, 2014 incident.[10]

The Board further notes that Dr. Carter did not examine appellant until May 2015, at which time appellant reported extending his right knee when he fell on March 23, 2014. However, on the date of injury of March 23, 2014 appellant did not report any right knee injury. This assertion was only presented several months later. Dr. Carter did not provide a clear opinion relating appellant's disability on or after December 20, 2014 to the March 23, 2014 work injury. In fact, his most recent January 12, 2016 report noted that he could find no reason for the severity of appellant's knee complaints or that they are work related.

Moreover, the Board notes that the record contains a well-rationalized opinion showing that appellant did not have work-related disability on or after December 20, 2014. Dr. Huffer, the second opinion physician, concluded in his January 12, 2016 report that the March 23, 2014 work injury caused only a left knee strain, while other left knee conditions disclosed by diagnostic testing were degenerative in nature and preexisted March 23, 2014. He further found that the right knee conditions disclosed by diagnostic testing were unrelated to the March 23, 2014 work injury because appellant did not initially report any right knee injury, and did not express right knee complaints for months following the date of injury.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish total disability on or after December 20, 2014 due to his March 23, 2014 work injury.

[10] Dr. Lawson examined appellant soon after his March 23, 2014 employment injury and did not report any right knee injury or symptoms. It was not until June 2014 that Dr. Pompan noted complaints of right knee pain.

ORDER

IT IS HEREBY ORDERED THAT the May 12, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 2016
Washington, DC

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

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

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