U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM J. PATTISON and U.S. DEPARTMENT OF COMMERCE, DECENNIAL CENSUS, Kansas City, MO

Docket No. 01-1824; Submitted on the Record;
Issued March 20, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant sustained an injury on May 5, 2000; (2) and whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request to subpoena witnesses.

On May 5, 2000 a Form CA-1, notice of traumatic injury and claim for continuation of pay and compensation, was filed on behalf of appellant, then a 56-year-old census enumerator. The CA-1 asserts that at approximately 12:30 p.m. on May 5, 2000 appellant was conducting an interview when he "went to car for glasses, turned stepped onto left foot -- left knee went out." Appellant's supervisor, Charles Stockhausen, a crew leader, indicated that he was aware of the facts and circumstances of the claim and did not contest the facts as appellant presented them on the Form CA-1.

Appellant sought medical treatment on May 5, 2000. A medical report from the emergency room at St. Anthony's Medical Center indicated that appellant was walking when he felt his "knee crunch." A knee sprain was diagnosed.

By letter dated June 6, 2000, the Office requested additional information from appellant including an explanation in detail of how the injury occurred, the immediate effects, what he did immediately thereafter, names and addresses of witnesses etc. The Office also asked appellant if he had any similar problems prior to the injury, if so to give the details. Appellant was requested to arrange for the submission of a medical report that included, among other things, a medical opinion discussing the relationship of the disability to factors of his federal employment. Appellant responded in a letter dated June 13, 2000, that on the day of the incident he was conducting a census interview. He entered a person's home to conduct the interview. It was dark, and appellant was wearing sunglasses. He excused himself to get his normal glasses from the car. Appellant pushed off on his left leg to jog to the car and that push is what caused the injury.

In a June 13, 2000 report, Dr. David Haueisen, an orthopedist, wrote that a magnetic resonance imaging (MRI) scan had been obtained and was negative for any kind of abnormality. He indicated appellant "most likely has some mild chondromalacia patellae, which may have been exacerbated when he had a slight twisting injury to his knee when he was running at the time of the injury." Dr. Haueisen was given a release to return to work without restrictions on June 14, 2000.

On July 31, 2000 the Office denied appellant's claim finding that the "medical reports did not establish a diagnosed condition resulting from the work incident of May 5, 2000. In particular, the Office found the medical reports equivocal on the issue of whether appellant sustained an exacerbation of the underlying chondromalacia.

In an August 18, 2000 letter, appellant requested a hearing and stated that he was having trouble getting names and addresses for witnesses to the incident from the employing establishment due confidentiality concerns related to the census. In a December 7, 2000 facsimile, appellant reiterated his request for help in obtaining information from the employing establishment regarding witnesses to the incident. In a December 7, 2000 facsimile reply, from the hearing representative, appellant's request for assistance from the Office to get information on the witnesses was treated as a request for subpoenas. It was denied because appellant failed to explain how witnesses to the incident would be relevant to his claim that was denied due to the insufficiency of the medical evidence.

A hearing was held on January 9, 2001. Appellant testified that prior to May 5, 2000 he had no history of knee problems, and on that day, while conducting an interview for the employing establishment, he jogged to his car to get his glasses when he stepped on a speed bump in the road, which caused his left knee to compress and twist and he had left knee pain and hobbled after that. He further testified that he had no new injuries to his left knee and that he had surgery on that knee on November 16, 2000. Appellant indicated that he was seeking compensation for time off work from May 6 to June 14, 2000 and for two to six weeks after his surgery of November 16, 2000 and he reiterated his problems obtaining information on witnesses to the incident. In an August 15, 2000 report, Dr Haueisen wrote:

> "There is apparently some confusion based on what I feel was a misinterpretation of my previous reports, that the knee injury was not work related. [Appellant] denied any problems with his knee prior to the injury on May 5, 2000. On that date, while on the job, he had a twisting injury to the knee and he has had persistent left knee pain since that time.
>
> "[Appellant's] ongoing working diagnoses have been either a nondisplaced medial meniscus tear, versus some symptomatic chondromalacia patella with anterior knee pain. I discussed with him that this is a diagnosis of a more chronic nature. However, the acute knee injury on May 5, 2000 may have exacerbated some underlying more chronic degenerative changes that were present….
>
> "[Appellant's] history of a twisting injury with subsequent sharp knee pain medially is consistent with a medial meniscus tear, although the MRI scan failed to show a definitive tear. However, if his knee pain symptoms persist, he would

> still be considered a candidate for a knee arthroscopy to search for a small medial meniscus tear. As noted previously, he also could have some knee pain from an aggravation of some chondromalacia patella and this might yet respond to PT [physical therapy]. [Appellant] has not gone to PT since this was yet accepted as a compensable injury.
>
> "Therefore, to clarify, it would appear that his knee injury was clearly related to the twisting injury sustained on the job on May 5, 2000…."

In progress notes dated September 28, 2000, Dr. Haueisen wrote that "it may be difficult to draw a line of causation from the twisting knee injury to his left knee to now bilateral knee pain and right ankle and foot pain."

In progress notes dated November 22, 2000, Dr. Haueisen further noted that he discussed with appellant:

> "[I]t is difficult to assign causation as to the knee pain that he was experiencing, with regards to his accident from May 5, 2000. Certainly, some of the degenerative changes are just due to the aging process, and perhaps to genetic predisposition. On the other hand, it is possible that the injury caused an exacerbation of the arthritic changes, causing the cartilage damage to become symptomatic."

In a December 28, 2000 report, Dr. Haueisen, after discussing the history of the incident, wrote:

> "[Appellant] had his left knee arthroscopy on November 16, 2000 with resection of a medial plica and chondroplasty of the medial femoral condyle. The arthroscopy was indicated because of persistent left knee pains with medial joint line tenderness, such that a meniscus tear was suspected. He was found at the time of surgery to have a medial plica that was resected, and also to have a loose-cartilage flap off of the medial femoral condyle which was resected back to a stable base. [Appellant] was seen most recently on December 28, 2000 and notes that the left knee continues to improve, with still some residual aching pain symptoms."

In a March 26, 2001 decision, the hearing representative denied the claim finding the medical evidence insufficient to establish that appellant sustained an injury on May 5, 2000. He specifically found Dr. Haueisen's reports speculative on the issue of causal relationship between the established incident and appellant's medical condition. The hearing representative also noted that he denied the request for subpoenas of witnesses to the incident because he accepted appellant's "account of injury and hence, witnesses to the injury are not necessary."

The Board finds that appellant did not sustain an injury on May 5, 2000.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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.[2] The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury 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 compensable 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.[3]

Although the Office accepted that the employment incident occurred as alleged, appellant has not submitted sufficient medical evidence to establish that a medical condition resulted from this incident. Dr. Haueisen's reports either make no mention of the causal relationship or they are couched in speculative terms. In his June 13, 2000 report, Dr. Haueisen states that appellant "may have … exacerbated his chondromalacia." In his August 15, 2000 report, he wrote appellant "'could' have some knee pain from an aggravation of some chondromalacia patella" and that "the acute knee injury on May 5, 2000 'may' have exacerbated some underlying more chronic degenerative changes that were present." In his progress notes dated September 28 and November 22, 2000, he indicated that it was difficult to draw a line of causation between the incident and his medical conditions. His December 28, 2000 report has no mention of causal relationship.

In Dr. Haueisen's August 28, 2000 report he states that "it would appear that his knee injury was clearly related to the twisting injury on the job on May 5, 2000." However, the Board finds that this statement, when read in conjunction with his other reports, does not meet appellant's burden of establishing with medical certainty a causal relationship between appellant's medical condition and a factor of his federal employment. It is well established that an opinion which is equivocal or speculative is of limited probative value regarding the issue of causal relationship.[4]

The Board further finds that the Office did not abuse its discretion by denying appellant's request for subpoenas. Section 8126 of the Act[5] states, "the Secretary of Labor, on any matter within his jurisdiction under this subchapter, may: (1) issue subpoenas for and compel the

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

[4] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956).

[5] 5 U.S.C. § 8126

attendance of witnesses within a radius of 100 miles…." This section of the Act gives the Office discretion to grant or reject requests for subpoenas. The Office's regulation on subpoenas provides that an Office hearing representative may upon his or her own motion or upon request of the claimant, issue subpoenas for the attendance of witnesses, if testimony of the witness is relevant and is the best way to ascertain the facts.[6]

The critical question in the case at the time the subpoenas were denied was the sufficiency of the medical evidence as it relates to causal relationship. The hearing representative was correct in finding that appellant failed to explain the relevance of subpoenaing witnesses to address an issue, whether the incident occurred, that is not in dispute. Therefore, the Office was correct in finding that subpoenaing the panel of Office referral physicians was not reasonably necessary for full presentation of appellant's case.

The decision of the Office of Workers' Compensation Programs dated March 16, 2001 is hereby affirmed.

Dated, Washington, DC
March 20, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[6] 20 C.F.R. § 10.619(a).