

**United States Department of Labor
Employees' Compensation Appeals Board**

R.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
El Centro, CA, Employer**

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**Docket No. 15-415
Issued: May 15, 2015**

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 15, 2014 appellant filed a timely appeal of the September 17, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 has met his burden of proof in establishing that he sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On August 8, 2014 appellant then a 55-year-old letter carrier, filed a Form CA-2, occupational disease claim for pain in his left knee. He alleged that he had a previous left knee injury in 2004 for which he underwent surgery and noted that recently his knee was swollen and

¹ 5 U.S.C. §§ 8101-8193.

painful. Appellant indicated that he was advised that continued walking would aggravate his knee condition. He realized his illness was caused or aggravated by his employment on July 31, 2014. Appellant did not stop work.

In an August 11, 2014 letter, OWCP advised appellant to submit additional information including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed injury. It also requested that appellant respond to a questionnaire to substantiate the factual elements of his claim. No additional evidence was received.

In a September 17, 2014 decision, OWCP denied the claim because appellant did not submit sufficient evidence establishing that the injury or events occurred as alleged. It advised that he failed to provide a description of specific employment factors that contributed to his medical condition and also failed to submit medical evidence containing a medical diagnosis in connection with the injury or events.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. Appellant must also establish that such event, incident, or exposure caused an injury.²

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) 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 is generally 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.³

² See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Solomon Polen*, 51 ECAB 341 (2000).

ANALYSIS

Appellant alleged that his knee began to bother him, started to swell, and was painful. He noted having a previous left knee injury in 2004, for which he underwent surgery, and was advised that continued walking would aggravate his knee condition.

The Board finds that there is no medical evidence of record to establish that the injury or events occurred as alleged. In a letter dated August 11, 2014, OWCP requested that appellant submit additional evidence in support of his claim, specifically a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had caused his claimed injury. It further requested that appellant answer a questionnaire to substantiate the factual allegations of his claim. However, no response was submitted prior to OWCP's decision of September 17, 2014.

As noted, part of appellant's burden of proof includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship between the employment and the diagnosed condition. The record contains no medical evidence. Because appellant has not submitted reasoned medical evidence explaining how and why his left knee condition was employment related, he has not met his burden of proof.

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁴ An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.⁵ Appellant failed to submit such evidence, and OWCP therefore properly denied appellant's claim for compensation.

On appeal appellant disagreed with OWCP's decision denying his claim for compensation. He explained that his supervisor submitted the claim before his doctor's appointment was scheduled and this was an error. Appellant requested that his claim be reviewed with all the information. The record before the Board contains no medical evidence explaining how and why his left knee condition was employment related, and therefore he has not met his burden of proof.⁶

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. Therefore, he may submit doctors' reports obtained from examinations after his supervisor submitted his claim.

⁴ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁵ *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁶ With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an occupational disease in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2014 decision of Office of Workers' Compensation Programs is affirmed.

Issued: May 15, 2015
Washington, DC

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

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

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