

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CATHY SUE SOWERS and DEPARTMENT OF THE ARMY,
ARMY NATIONAL GUARD, Springfield, IL

*Docket No. 01-1836; Submitted on the Record;
Issued April 17, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant's left knee condition is causally related to an October 31, 1999 employment incident; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On November 9, 1999 appellant, then a 46-year-old personnel technician, filed a traumatic injury claim alleging that while on travel status in Florida she stepped out of the shower and twisted her left knee on October 31, 1999. Appellant sought treatment the next day at a local hospital for a sprain, but lost no time from work.

In a report dated January 7, 2000, Dr. D. Gordon Allan, a Board-certified orthopedic surgeon, stated that following the October 1999 injury appellant had negative x-rays but was unable to bear full weight. She had a history of osteoarthritis of the left knee, with arthroscopy on July 16, 1998 and a left lateral meniscectomy. On examination, Dr. Allan found no medial or lateral instability, no patellofemoral crepitus, and no effusions in the left knee. Appellant complained of pain in the left knee, but the pain could not "be reproduced" on examination. Appellant saw Dr. Allan again on April 14, 2000, reporting bilateral knee pain and was injected with lidocaine in both knees.

The record reflects that a medical bill in the amount of \$846.80 was forwarded by Memorial Medical Center for a magnetic resonance imaging scan performed on June 29, 1999.

By letter dated March 1, 2001, the Office noted that appellant's claim had been accepted for a left leg injury, but that the evidence submitted was insufficient to establish whether she was entitled to medical benefits. The Office stated that the medical documentation provided no diagnosed condition for the October 31, 1999 injury and requested that appellant's physician provide a narrative report, including a diagnosis and opinion on the causal relationship between any diagnosed condition and appellant's employment.

On April 19, 2001 the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish a causal relationship between the October 31, 1999 incident and appellant's preexisting knee conditions.

Appellant requested reconsideration and stated that "significant additional evidence" was being submitted by her physician. No medical evidence was forthcoming.

By decision dated May 8, 2001, the Office denied merit review of its prior decision on the grounds that appellant's request neither raised a substantive legal question nor included new and relevant evidence.

The Board finds that appellant has failed to establish a causal relationship between the October 31, 1999 twisting injury and her current left knee condition.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim,² including the fact that the individual is an "employee of the United States" within the meaning of the Act,³ that the claim was timely filed within the applicable time limitation period of the Act,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or condition for which compensation is claimed is causally related to the employment injury.⁵ These elements must be established regardless of whether the claim is for a traumatic injury or an occupational disease.⁶

To determine whether an employee has sustained a traumatic injury in the performance of duty, "fact of injury" must first be established.⁷ The employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁸ 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.⁹ An

¹ 5 U.S.C. §§ 8101-8193.

² *Irene St. John*, 50 ECAB 521, 522 (1999).

³ *Barbara L. Riggs*, 50 ECAB 133, 137 (1998).

⁴ *Albert K. Tsutsui*, 44 ECAB 1004, 1007 (1993).

⁵ *David M. Ibarra*, 48 ECAB 218 (1996); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *Ruth Seuell*, 48 ECAB 188, 192 (1996).

⁷ *Neal C. Evins*, 48 ECAB 252 (1996).

⁸ *Michael W. Hicks*, 50 ECAB 325, 328 (1999).

⁹ See 5 U.S.C. § 8101(5); 20 C.F.R. § 10.5(ee) (1999) (defining injury).

employee may establish that an injury occurred in the performance of duty but fail to establish that his or her disability or resulting condition was causally related to the injury.¹⁰

Causal relationship is a medical issue,¹¹ and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.¹² 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.¹³

In this case, the Office accepted that appellant twisted her knee while in the performance of duty on October 31, 1999 when stopping from a shower while on temporary duty. The second component of fact of injury is whether appellant has submitted medical evidence to establish that the employment incident caused a personal injury.

The medical evidence relating to the October 31, 1999 injury consists of a patient instruction sheet dated November 1, 1999 from a local emergency room and the January 7 and April 14, 2000 reports of Dr. Allan. The November 1, 1999 document contains no medical diagnosis and therefore is irrelevant to the issue of causal relationship.

Dr. Allan noted appellant's injury to her left knee on October 31, 1999 but offered no opinion on how the twisting incident was causally related to appellant's treatment for her preexisting bilateral knee conditions.¹⁴ He found pain on the medial and lateral joint line but did not relate this to the October 31, 1999 incident. Dr. Allan related a left knee history of arthroscopy on July 16, 1998 which showed synovitis, chondromalacia of the patella, and a tear of the lateral meniscus, but provided no opinion on whether any of these conditions were affected by the twisting incident. Finally, in his April 14, 2000 report, Dr. Allan merely noted "consistent bilateral knee pain" with "persistent joint line tenderness, right greater than left." The Office denied payment of a medical bill submitted for a diagnostic test which predated the October 31, 1999 incident.

The Board finds that the Office properly denied appellant's request for reconsideration.

¹⁰ *Earl David Seal*, 49 ECAB 152, 153 (1997); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

¹¹ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

¹² *Duane B. Harris*, 49 ECAB 170, 173 (1997).

¹³ *Gary L. Fowler*, 45 ECAB 365 (1994).

¹⁴ See *Michael E. Smith*, 50 ECAB 313, 316 (1999) (finding that appellant failed to submit a rationalized medical opinion on causal relationship); *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (medical evidence that offers no opinion on the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹⁵ the Office's regulations provides that a claimant may obtain review of the merits of the claim by (1) showing that the Office erroneously applied or interpreted a specific point of law, or (2) advancing a relevant legal argument not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.¹⁶ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.¹⁷

The Office informed appellant, in its March 1, 2001 letter, of the factual and medical documentation required to establish her claim. Appellant stated in her reconsideration request that additional medical evidence would be submitted. However, no evidence was submitted in support of the request. Appellant failed to submit relevant pertinent evidence in support of her request and therefore did not meet this requirements of 20 C.F.R. § 10.606(b)(2)(iii).

The May 8 and April 19, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
April 17, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁵ 5 U.S.C. § 8128(a).

¹⁶ 20 C.F.R. § 10.606(b)(2).

¹⁷ 20 C.F.R. § 10.608(b).