United States Department of Labor
Employees' Compensation Appeals Board

VERNICE T. CLEMENTS, Appellant	)	
and	)	**Docket No. 05-267**
	)	**Issued: March 24, 2005**
DEPARTMENT OF THE NAVY, NAVAL AIR STATION, Jacksonville, FL, Employer	)	

Appearances:
Vernice T. Clements, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On November 8, 2004 appellant filed a timely appeal of the August 20, 2004 merit decision of the Office of Workers' Compensation Programs, which denied her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.[1]

ISSUE

The issue is whether appellant established that she sustained an injury in the performance of duty on June 3, 2004.

FACTUAL HISTORY

On June 3, 2004 appellant, a 49-year-old general supply specialist, filed a traumatic injury claim alleging that she injured her right leg while descending stairs during a fire drill. She

[1] The record on appeal includes evidence submitted after the Office issued the August 20, 2004 decision. The Board may not consider evidence that was not before the Office at the time it rendered its final decision. 20 C.F.R. § 501.2.

stated that when returning to her office, she felt as if she were going to fall so she braced herself against a chair and her knee popped. Believing the pain would subside, appellant returned to her desk. However, the pain worsened and she was later transferred to the Naval hospital on a stretcher. Appellant was released that day to return to work with restrictions of no prolonged standing or walking until she was seen by an orthopedic surgeon.

On June 21, 2004 a physician's assistant noted a diagnosis of right medial collateral ligament sprain and referred appellant for physical therapy. She was released to return to work with restrictions of no kneeling, squatting or climbing.

Appellant was seen at the Naval hospital's occupational medicine department on June 29, 2004. The treatment records indicated that she had undergone surgery to repair a torn meniscus in her right knee on March 3, 2004. Beverly Petty, a physician's assistant, noted that appellant was involved in a fire drill at work on June 3, 2004 and complained of pain in the right knee. Appellant also reported increased pain with prolonged sitting. Physical examination revealed that appellant walked with a slight limp and her right knee was larger than her left knee. There was no evidence of edema, but there was a decrease in flexion and extension. Ms. Petty diagnosed right knee strain.

Dr. Lawrence W. Weller, III, Board-certified in emergency medicine, examined appellant on June 30, 2004 and released her to resume her regular duties without restriction effective July 2, 2004.

On July 13, 2004 the Office advised appellant that the information submitted was insufficient to support her claim. The Office stated that the record did not include evidence of a diagnosed condition resulting from the June 3, 2004 injury. Accordingly, the Office asked appellant to submit additional factual and medical information.

The Office subsequently received treatment records from Dr. Farid A. Hakim, an orthopedic surgeon, physical therapy records and Dr. Weller's June 30, 2004 emergency room treatment records.

When he examined appellant in the emergency room on June 30, 2004, Dr. Weller noted that appellant had undergone surgery on her right knee and she complained of sharp knee pain beginning that day. He diagnosed right knee pain, prescribed pain medication, and recommended immobilizing the joint and using crutches.

Dr. Hakim examined appellant's right knee on July 7, 2004 and noted that she was status post right knee arthroscopy. Appellant was complaining of pain and was limping and Dr. Hakim noted that she had not yet begun physical therapy. He diagnosed right knee internal derangement and restricted appellant to sedentary work with no climbing, squatting or kneeling. Dr. Hakim also prescribed physical therapy three times a week for four weeks. The physical therapy records indicated that appellant received treatment on July 14 and 19, 2004. When she returned to Dr. Hakim's office on July 21, 2004, he noted that she was an established patient being followed for a right knee arthroscopy with recurrent injury. Dr. Hakim reported that appellant had attended physical therapy and was slowly improving. He noted continued complaints of pain and swelling and on physical examination Dr. Hakim reported a normal gait, normal flexion and

extension, normal strength and tone and no ligamentous laxity. However, appellant's right knee was positive for effusion and mild tenderness and crepitation was noted in the patellofemoral joint. Dr. Hakim diagnosed chondromalacia of the patella, knee derangement and torn medial and lateral meniscus. He released appellant to full duty with no restrictions effective July 21, 2004.

By decision dated August 20, 2004, the Office denied appellant's claim finding that the medical evidence did not establish that the claimed medical condition resulted from the June 3, 2004 event.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work claimed is causally related to the employment injury.[3]

To determine if an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[4] The second component is whether the employment incident caused a personal injury.[5] An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[6]

ANALYSIS

The Office accepted that the June 3, 2004 employment incident occurred as alleged. The medical evidence, however, does not establish that appellant's current right knee condition was either caused or aggravated by the June 3, 2004 employment incident. The record indicates that appellant underwent arthroscopic surgery in March 2004 for a right knee meniscus tear and she

[2] 5 U.S.C. § 8101 *et seq.*

[3] 20 C.F.R. § 10.115(e) (1999); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

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

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

returned to work following surgery on May 29, 2004; just four days prior to the June 3, 2004 incident. Although appellant reported an increase of pain on June 3, 2004 while descending stairs and that her knee subsequently popped, neither Dr. Hakim nor Dr. Weller attributed appellant's right knee condition to the June 3, 2004 employment incident.[7] The record does not include a physician's opinion attributing appellant's right knee condition to the June 3, 2003 employment incident. Rather, the record appears that she had a preexisting right knee condition for which surgery had been performed. Appellant failed to establish that her right knee condition was caused or contributed to by the June 3, 2004 employment incident. The Office properly denied her claim.

CONCLUSION

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on June 3, 2004.

ORDER

IT IS HEREBY ORDERED THAT the August 20, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[7] Additionally, the two physician's assistants who examined appellant on June 21 and 29, 2004 did not specifically attribute her right knee condition to the June 3, 2004 incident. A physician's assistant is not considered a "physician" under the Act, and therefore, cannot render a medical opinion. 5 U.S.C. § 8101(2) (this subsection defines "physician" to include surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law); *see Vicky L. Hannis*, 48 ECAB 538, 540 (1997); *see also Ricky S. Storms*, 52 ECAB 349, 353 (2001) (the Board held that a medical opinion, in general, can only be given by a qualified physician).