United States Department of Labor
Employees' Compensation Appeals Board

W.B., Appellant	)	
and	)	**Docket No. 07-1338**
	)	**Issued: March 18, 2008**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 20, 2007 appellant filed a timely appeal from the May 19, 2006 merit decision of the Office of Workers' Compensation Programs, which denied her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant injured her left knee in the performance of duty on August 22, 2003, as alleged.

FACTUAL HISTORY

On August 22, 2003 appellant, then a 47-year-old nurse, sustained an injury in the performance of duty: "While performing pill line and responding to emergencies, injury occurred while manipulating pill cart around food service carts and entrances to units. At one

point pill cart rolled back on left foot. I pulled myself out from cart." She described the nature of her injury as "lower back and left foot."

Appellant first obtained medical care on August 25, 2003. A medical note described her complaint as "lower back pain that runs down left leg" and stated that she injured her lower back at work. Imaging reports noted appellant's clinical history as "back pain." On September 3, 2003 she received a diagnosis of left lower extremity radiculopathy and limitations of no lifting or bending. The Office accepted appellant's claim for left-sided sciatica.

On September 11, 2003 appellant informed the Office that she was still experiencing radiculopathy of the left lower extremity. On September 23, 2003 she wrote to a doctor about alternative duty. "It is very important that you note," she stated, "as I explained today that I did not have any back pain during training and that the acute episode of back pain and numbness to my left foot and leg did not occur until after my injury on August 22, 2003." On September 26, 2003 Dr. Vincent A. Renzi, a specialist in internal medicine, indicated that appellant was unable to perform her usual job because she had chronic lower back pain with radicular symptoms down the left leg. He described the history of her injury: "While at work on August 22, 2003, giving out medications and pushing a cart, [appellant] got her foot lodged under the cart and she managed to pull her foot from the cart, but developed lower back pain with radicular symptoms, into her left lower extremities, [sic] down into her foot and toes. This was persistent, so she came to my office on August 25, 2003, for an evaluation. [Appellant] was diagnosed at that time, as having sciatic radiculopathy." On September 29, 2003 Dr. Renzi noted degenerative joint disease of the lumbosacral spine and diagnosed radiculopathy. Appellant underwent an initial physical therapy evaluation on October 6, 2003. She noted pain in the area of her coccyx that was referred to the lateral lower extremity and to the lateral toes. On October 7, 2003 the therapist noted that appellant was a little sore after the last visit and complained of continued low back pain and aching into the back of the left knee.

On October 13, 2003 Dr. David C. Lee, a consulting neurologist, related appellant's history of injury:

> "As you know, [appellant] is a pleasant, 47-year-old woman who has been having problems with radiculopathy and pain in her left buttock radiating down into her foot. Her pain started when she was pushing a medication cart in the prison where she works as a nurse and she had to push it through a doorway. The cart rolled backwards toward [appellant] and onto her left foot and the door behind her electronically closed. She had to twist her back to pull the cart and she developed some back pain. [Appellant] also had to pull up on a window several times leaning over a counter and she thinks that may have aggravated her symptoms. This was on a Friday night and by Saturday she was starting to have persistent left buttock pain radiating down her leg with numbness and tingling. By Sunday, [appellant's] symptoms were worse and the left foot was numb."

Dr. Lee noted that appellant had a history of trauma many years ago from a motor vehicle accident[1] but had more cervical pain than lower back pain. He described his findings on physical

[1] She had motor vehicle accidents in 1993 and 1996.

examination. Dr. Lee reported persistent left buttock pain with findings of neurological involvement into the left leg.

On October 29, 2003 appellant told her physical therapist that she had weakness in her left knee in the medial and lateral joint lines. She continued to feel numbness in the lateral foot and pain in the left distal lower extremity. Dr. Renzi continued to report the diagnosis as degenerative joint disease of the lumbosacral spine with radiculopathy left.

A November 13, 2003 functional capacity evaluation related the following subjective history:

> "[Appellant] is a 47-year-old female with the current diagnosis of [p]ain and sciatica, radiculopathy, onset August 22, 2003. [She] reports she was injured while working as a nurse at a state prison. A medicine cart was pushed onto [appellant's] foot causing her to forcefully pull her foot out from under it, thereby injuring her low back. Her chief complaint now is numbness of her left leg and lateral three toes, and pain with bending over and reaching to the right side. [Appellant] reports the pain is in the right side of her low back."

On December 1, 2003 appellant wrote to the Office of Personnel Management Inspector General, stating in part: "At this time my left leg is still weak, my left foot still numb and I am under treatment for hypertension due to the stress of this ongoing charade." On December 4, 2003 she complained to her physical therapist that, among other things, she had pain in the back of her left knee when pushing off to go up steps. On December 10, 2003 appellant stated that during her functional capacity evaluation she had pain to the back of the left knee and in the lower right back when asked to squat as one of the exercises. On December 19, 2003 she complained of, among other things, sharp pain at the posterior left knee with stretches.

On January 17, 2004 Dr. Lee reported that appellant was still having pain in her left buttock radiating down her leg. However, appellant was now complaining of pain more in her left knee and hip. Dr. Lee noted: "[Appellant] was involved in a motor vehicle accident in which she was rear ended by another car. She was at a stoplight and the car hit her from behind. Fortunately, [appellant] did not re-aggravate her lower back pain but has been complaining of more pain in her knee and hip."[2] Dr. Lee reported that on examination appellant seemed to have pain in the left medial aspect of her knee.

On February 9, 2004 Dr. Kam Momi, an orthopedic surgeon, related the following history of injury:

> "[Appellant] states that all of a sudden on August 23, [sic] 2003 when she was at work in the prison in Philadelphia, she stated [that] she was struck by a metal door, and her medication cart that she pushes as a registered nurse rolled over her left foot. She subsequently began to have low back pain, and the next day when she came to work again, any repetitive extension type of activity exacerbated her back pain and then she began to have pain and numbness down the left leg."

[2] Appellant reported that the motor vehicle accident occurred on December 30, 2003.

A February 24, 2004 magnetic resonance imaging (MRI) scan showed no evidence of internal derangement in the left knee but did show a small osteochondral lesion on the medial femoral condyle, mild chondromalacia patella and subcutaneous edema extending along the lateral joint line suggesting bursitis. On March 25, 2004 Dr. John M. Gray reported that appellant was seen for problem with her left knee:

> "[Appellant] actually has not had any previous problem with this knee until she had an injury. She was at work, where she was moving a heavy cart through some heavy doors. [Appellant's] foot got trapped and twisted and these doors seem to push backwards and the cart caught her leg and she caught between them, this happened to her in a night. She started developing a significant amount of back pain, pain down her left leg."

Dr. Renzi noted that the osteochondritic lesion found on the medial femoral condyle appeared to be old in nature, "but I do think that this is what has been flared up." He repeated: "I do think that this is probably an old lesion, however, it has flared up from either the injury or from the back causing her to limp."

On June 17, 2004 an Office medical adviser found no evidence at all that appellant's left knee lesion was related to her employment injury on August 22, 2003. The Office informed appellant that her case was not accepted for left knee lesions.

On March 10, 2005 Dr. Mark J. Reiner, an orthopedic surgeon, reported the following history of injury: "[Appellant] states that, while working handing out medication, she was caught behind an electronic door. This injured her left knee banging and twisting it. [Appellant] also injured her lumbosacral spine attempting to disengage herself." He recommended an MRI scan of the left knee.

In a decision dated March 30, 2005, the Office denied expanding its acceptance of appellant's claim to include her left knee lesion. The Office found that she failed to establish that her left knee condition was caused by factors of employment.

On April 4, 2005 Dr. Momi reported that appellant was struck by a heavy metal door while pushing her medication cart during her job as a registered nurse. The cart rolled over her foot, Dr. Momi, stated, and she had low back pain as well as left knee pain as a direct result of that injury. He concluded: "It is my opinion that within a reasonable degree of medical probability, [appellant's] work injury of August 23, [sic] 2003 caused both her back injury, and her left knee injury."

On May 11, 2005 appellant underwent left knee arthroscopy with arthroscopic lateral meniscectomy, chondroplasty of the medial femoral condyle, synovectomy and resection of synovial plica.

At a March 1, 2006 oral hearing before an Office hearing representative, appellant described what happened on August 22, 2003. She stated that meal carts hit her medication cart. The doors were slamming behind her and she was pinned. The cart rolled over her left foot. "The cart hit my left knee on the outer part and with the cart sitting on top of me, I couldn't go anywhere and I had to try to manipulate to get the cart around the other four carts."

In a decision dated May 19, 2006, the Office hearing representative affirmed the denial of appellant's claim that she sustained a left knee condition causally related to her August 22, 2003 employment injury.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[3] When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.[4]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[5]

Causal relationship is a medical issue,[6] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[7] must be one of reasonable medical certainty,[8] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[9]

ANALYSIS

Appellant has not established a factual basis for her claim that she injured her left knee on August 22, 2003. She told Dr. Reiner in March 2005 that she was caught behind an electronic

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[3] 5 U.S.C. § 8102(a).

[4] *See generally John J. Carlone*, 41 ECAB 354 (1989).

[5] *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984). *See also George W. Glavis*, 5 ECAB 363 (1953).

[6] *Mary J. Briggs*, 37 ECAB 578 (1986).

[7] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[8] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[9] *See William E. Enright*, 31 ECAB 426, 430 (1980).

door and this "injured her left knee banging and twisting it." However, this depiction of the August 22, 2003 injury does not conform with appellant's early descriptions of what happened or in the history of injury she reported to her initial medical providers. She originally alleged injury to her left foot when a pill cart rolled back on it. The first time appellant mentioned her left knee was to a physical therapist on October 7, 2003. She was a little sore after her initial physical therapy visit and complained of continued low back pain and aching into the back of the left knee. Appellant did not mention her knee again until December of that year, when she stated that she had pain in the back of her left knee when pushing off to go up steps. She also experienced pain to the back of the left knee and lower right back when asked to squat as one of the exercises during her functional capacity evaluation and sharp pain at the posterior left knee with stretches. This was four months after the employment injury. Appellant still provided no history of the cart striking her knee. Dr. Momi reported on February 9, 2004 that the cart rolled over appellant's left foot and that appellant experienced low back pain and radicular pain and numbness.

After a February 24, 2004 MRI scan showed a small osteochondral lesion on the medial femoral condyle, appellant appears to have modified the description of the August 22, 2003 incident. On March 24, 2004 Dr. Gray reported that appellant's foot got "trapped" and "twisted," that the cart "caught" her leg. In 2005 appellant added more detail. As noted, she told Dr. Reiner that she injured her left knee banging and twisting it. In her March 1, 2006 testimony before the Office hearing representative, appellant stated: "The cart hit my left knee on the outer part." This was the first mention by appellant of her left knee being struck in the August 22, 2003 incident, more than two years after the fact.

There is a clear inconsistency between appellant's late account of a direct knee impact on August 22, 2003 and the history that is in the contemporaneous factual and medical evidence. She was late in reporting a left knee injury, and her late account is inconsistent with the facts and circumstances. The contemporaneous evidence does not confirm a left knee injury, and there is no convincing explanation for the lack of confirmation. This raises serious doubt on the validity of appellant's claim that she injured her left knee on August 22, 2003, as alleged.

There is some medical opinion evidence to support appellant's claim. Dr. Renzi reported that the lesion was probably old but had flared up either from the August 22, 2003 employment injury or from the back causing appellant to limp. But this opinion is clearly speculative and unsupported by any medical rationale. It has little probative value.[10] On April 4, 2005 Dr. Momi reported to a reasonable degree of medical probability that the August 2003 employment injury caused both a back injury and a left knee injury. He offered no basis for this opinion. Moreover, he failed to reconcile his opinion with his February 9, 2004 report, which made no mention of a left knee injury. His opinion also has little probative value.

Appellant has not established that the cart struck her left knee on August 22, 2003, as alleged. She has not established through an accurate and well-rationalized medical opinion that

[10] *See Connie Johns*, 44 ECAB 560 (1993) (holding that a physician's opinion on causal relationship must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate medical and factual background). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

such an incident, if it did occur, caused or aggravated the osteochondral lesion on her medial femoral condyle or any other diagnosed left knee condition.

CONCLUSION

The Board finds that the evidence fails to establish that appellant injured her left knee in the performance of duty on August 22, 2003, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 18, 2008
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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