

On September 19, 2005 appellant, then a 52-year-old shipbuilding specialist, filed an occupational disease claim alleging that he developed a left knee condition as a result of climbing ladders on board a ship at work. He became aware of his condition on August 11, 2005 and realized that it was caused by his work on September 11, 2004. Appellant did not stop work.

Appellant submitted a statement noting that in September 2004 he twisted his left knee while working on a ship. He noted that his work duties required him to climb ladders which aggravated his condition. Appellant was treated at the employing establishment clinic by Dr. B.W. Duckworth, Jr., a Board-certified internist, on August 8, 2005, who diagnosed left knee medial pain. He reported stepping onto a tank and experiencing left knee pain and swelling which was aggravated with climbing over cables, ladders and steps. Dr. Duckworth noted a marked effusion of the left knee, appellant walked without a limp, had full range of motion with no tenderness and the joint was stable without deformity, laxity or crepitation. On August 18, 2005 appellant was treated by Dr. Larry B. Smiak, an osteopath, who diagnosed left knee derangement.

In a letter dated September 29, 2005, the Office advised appellant of the type of factual and medical evidence needed to establish his claim, particularly requesting that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors. In a letter of the same date, it requested the employing establishment address appellant's allegations.

The employing establishment controverted the claim noting that appellant did not identify when and how he was injured. The employing establishment advised that before his employment appellant fractured his right hip in a 1998 motor vehicle accident.

In response to the Office's questions, appellant reiterated that his work duties aggravated his left knee condition. He noted outside activities of coaching girl's "fast pitch," swimming and bike riding. Appellant was treated by Dr. Duckworth on October 6 and 13, 2005, for right hip pain and left knee pain and he diagnosed degenerative disease of the left knee. He reported twisting his left knee while walking down a stairwell at work. Appellant was also treated by Dr. Brian D. Tallerico, an osteopath, on August 11, 2005, for left knee pain. He reported hurting his left knee at work in May 2004 and noted recently experiencing increasing pain with weight bearing activities and stair climbing with grinding and catching inside the knee. Dr. Tallerico noted findings upon examination of limited range of motion of the left knee, positive McMurray test, mild crepitus and mild varus alignment. He diagnosed severe varus arthrosis and near complete obliteration of the medial joint space. In a report dated October 7, 2005, Dr. Tallerico opined that appellant's work injury of May 2004 permanently aggravated the preexisting degenerative joint disease of the left knee. He stated that appellant's present knee condition was both a progression of his preexisting condition and a new condition due to his work-related injury, a meniscal tear.

In a decision dated October 31, 2005, the Office denied appellant's claim on the grounds that the medical evidence did not establish that his condition was caused by his work duties. In a letter postmarked on December 5, 2005, appellant requested an oral hearing. By decision dated January 13, 2006, the Office denied appellant's request for an oral hearing as being untimely filed.

On October 10, 2006 appellant requested reconsideration. He submitted an August 23, 2005 report from Dr. Tallerico who opined that appellant's ongoing left knee pain was directly related to the May 2004 industrial injury where he twisted his knee. Dr. Tallerico diagnosed left knee medial meniscus tear related to an industrial injury with mild preexisting degenerative

changes in the medial compartment. He opined that, although appellant had some preexisting degenerative changes in the medial compartment, these changes were permanently aggravated by the medial meniscus tear. Dr. Tallerico noted that x-rays of the left knee in August 2005 revealed significant progression of the medial-sided knee arthritis. Appellant sought treatment from Dr. Milan S. Moore, a Board-certified orthopedist, on April 12, 2006, for left knee pain. He reported working on a ship in May 2004 when he twisted his left knee and had persistent pain and catching of the knee. Dr. Moore noted appellant sustained a second left knee injury on July 4, 2006 which involved twisting and pivoting while inspecting a carrier in dry dock. He noted findings of an effusion of the left knee, slight varus alignment, tenderness along the medial line and limited range of motion. Dr. Moore diagnosed medial compartment osteoarthritis of the left knee and extensive posterior horn medial meniscal tear. He opined that the meniscal tear likely occurred on the date of injury as a result of a twisting episode. Dr. Moore opined that appellant's May 2004 injury contributed to his knee problem and the rapid progression of his medial compartment arthritis. Appellant was also treated by a physician's assistant in July 2006 who diagnosed cumulative trauma to the left knee which occurred while on active duty.

In a decision dated April 9, 2007, the Office denied modification of the October 31, 2005 decision.

By letter dated April 1, 2008, appellant requested reconsideration. He submitted a statement dated March 31, 2008 and indicated that in April 2004 he injured his left knee at work. Appellant noted that Dr. Tallerico incorrectly noted the date of injury as May 2004. He submitted a physician's assistant note dated April 30, 2004 who diagnosed left knee pain, hyperlipidemia and hypertension. A magnetic resonance imaging (MRI) scan of the left knee dated May 6, 2004 revealed extensive oblique complex tear involving the posterior horn of the body of the medial meniscus. Also submitted was a treatment note prepared by a health care provider whose signature is illegible, who treated appellant for a left knee injury and diagnosed degenerative joint disease.

By decision dated June 11, 2008, the Office denied modification of the April 9, 2007 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 the 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹

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

¹ Gary J. Watling, 52 ECAB 357 (2001).

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.²

ANALYSIS

It is not disputed that appellant's duties as a shipbuilding specialist included prolonged standing and walking, twisting and climbing and descending shipboard ladders and stairs. It is also not disputed that appellant has been diagnosed with a left knee condition. However, appellant has not submitted sufficient medical evidence to establish that he has a diagnosed left knee condition causally related to specific employment factors or conditions. On September 29, 2005 the Office advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from a physician addressing how specific employment factors may have caused or aggravated his claimed condition.

Appellant was treated by Dr. Duckworth at the employing establishment clinic from August 8 to October 13, 2005 for left knee medial pain. He reported stepping onto a tank and experiencing left knee pain and swelling which was aggravated with climbing over cables, ladders and steps. In reports dated October 6 to 13, 2005, Dr. Duckworth diagnosed degenerative disease of the left knee. Likewise, on August 18, 2005, appellant was treated by Dr. Smiak who diagnosed left knee derangement. However, these reports are insufficient to establish the claim as they do not specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.³ To the extent that Dr. Duckworth's opinion may be viewed as supporting causal relationship, it is insufficient as he did not provide medical rationale to explain why specific work duties caused or aggravated a diagnosed medical condition.

Appellant submitted an August 11, 2005 report from Dr. Tallerico who diagnosed severe varus arthrosis and near complete obliteration of the medial joint space. He reported hurting his left knee at work in May 2004 and experiencing significant pain and swelling and recently

² *Solomon Polen*, 51 ECAB 341 (2000).

³ *A.D.*, 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

experiencing increasing pain with weight-bearing activities and stair climbing. However, Dr. Tallerico appears merely to be repeating the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition was work related. To the extent that he is providing his own opinion, Dr. Tallerico failed to provide a rationalized opinion explaining why any diagnosed conditions were caused or aggravated by particular factors of employment.⁴ In an October 7, 2005 report, Dr. Tallerico opined that appellant's work injury of May 2004 permanently aggravated the preexisting degenerative joint disease of the left knee. He further opined that appellant's present knee condition represents both a progression of his preexisting condition and a new condition due to his work-related injury. Likewise, on August 23, 2005 Dr. Tallerico opined that appellant's ongoing left knee pain was directly related to the May 2004 industrial injury where he twisted his knee at work. He opined that, although appellant had some preexisting degenerative changes in the medial compartment, these changes were permanently aggravated by the medial meniscus tear. The Board finds that, although Dr. Tallerico supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's left knee condition and the factors of employment. For example, he did not explain the process by which twisting his knee at work or climbing and descending shipboard ladders would cause the diagnosed condition and why such condition would not be due to any nonwork factors such as bike riding. In none of Dr. Tallerico reports does he explain the reasons particular work duties would cause or aggravate a diagnosed left knee condition. Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant submitted a report from Dr. Moore dated April 12, 2006 who treated him for left knee pain and diagnosed medial compartment osteoarthritis of the left knee and extensive posterior horn medial meniscal tear. He reported twisting his left knee while climbing on a ship in May 2004 and subsequently experiencing persistent pain and catching of the knee. Dr. Moore noted that appellant sustained a second injury on July 4, 2006 while twisting and pivoting to inspect a carrier in dry dock. He opined that the meniscal tear likely occurred on the date of injury as a result of a twisting episode. The Board notes that Dr. Moore's report provides some support for causal relationship but is insufficient to establish the claimed left knee condition was causally related to his employment duties. In that report, he opined that it "was likely" that the twisting episode caused the meniscal tear. However, at best, this report provides only speculative support for causal relationship as the physician qualifies his support by noting that appellant's employment "likely" caused his condition.⁵ Dr. Moore provided no medical reasoning to support his opinion on causal relationship. Therefore, this report is insufficient to meet appellant's burden of proof.

Furthermore, reports of diagnostic testing, such as the x-ray and MRI scan reports are insufficient to establish appellant's claim as they do not provide a physician's opinion on the causal relationship between appellant's job factors and a diagnosed medical condition.

⁴ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁵ See *Jennifer Beville*, 33 ECAB 1970 (1982) (where the Board found a physician's statement that appellant's complaints "could have been" related to an employment incident to be speculative and of limited probative value).

Appellant also submitted physician's assistant notes dated April 30, 2004 and July 2006 and a treatment note prepared by a nonspecific health care provider. However, the Board has held that physician's assistants are not competent to render a medical opinion under the Act⁶ and there is no evidence that the document from the nonspecific health care provider is from a physician. Likewise, other medical documents not signed by a physician are not probative medical evidence and do not establish appellant's claim.⁷ Therefore, these reports are insufficient to meet appellant's burden of proof.

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 the condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁸ Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.

On appeal, appellant asserts that the Office improperly denied appellant's occupational disease claim because of a lack of evidence of a material change in a preexisting condition and refused to consider that he sustained a traumatic injury because he did not file a Form CA-1, traumatic injury claim. The Board does not agree. The Office, in its decision dated June 11, 2008, denied modification of an April 9, 2007 decision which found that appellant failed to establish that his left knee condition resulted from the accepted work events. The Office noted that appellant had submitted some evidence indicating that he may have sustained a left knee injury in April or May 2004 and that his work duties included daily climbing and descending of shipboard ladders. However, the Office denied appellant's claim because he failed to provide a physician's rationalized opinion on the causal relationship between appellant's accepted job factors and his diagnosed left knee condition and not because he did not file a CA-1, notice of traumatic injury. Furthermore, appellant's September 19, 2005 occupational disease claim attributed his condition to job duties occurring over more than one day.⁹ As such, the Office properly developed the matter as an occupational disease claim.

⁶ See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the Act); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

⁷ See 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

⁸ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ 20 C.F.R. § 10.5(q) defines occupational disease or illness as a condition produced by the work environment over longer than a single workday or shift. In contrast, a traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, in a single workday or shift. 20 C.F.R. § 10.5(ee).

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he developed an employment-related injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 17, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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