

The Office accepted that on September 7, 2002 appellant, then a 34-year-old letter carrier, sustained a contusion of the left lower leg when she jumped up on a car to escape a pursuing dog. Appellant was placed on light duty as of September 7, 2002 and returned to full

duty on October 2, 2002.¹ The record indicates that her case was closed. On February 26, 2004 appellant stopped work and underwent right knee surgery. She did not return to work.²

On April 26, 2004 appellant filed a claim for a recurrence of disability, asserting that, while delivering mail on July 15, 2003, she experienced left knee swelling, right wrist pain and paraspinal muscle spasms. In a July 14, 2004 letter, the Office advised her of the evidence needed to establish her claim and afforded her 30 days for submission.

In reports dated from August to November 2003, Dr. Todd B. Soifer, an attending Board-certified orthopedic surgeon, diagnosed internal derangement and osteoarthritis of the left knee. He prescribed a knee brace and noted work restrictions. In a March 10, 2003 report, Dr. Himanshu Patel, an attending Board-certified internist, diagnosed back pain and a pinched nerve.

In an April 22, 2006 report, Dr. Slobodan N. Aleksic, an attending Board-certified psychiatrist and neurologist, noted that appellant attributed lumbar and right upper extremity pain to the September 7, 2002 incident. He diagnosed internal derangement of the right shoulder, wrist and knee and cervical and lumbar radiculopathy. Dr. Aleksic opined that the diagnosed conditions were “clearly related to the work[-]related accident as described.”³

By decision dated July 17, 2007, the Office denied appellant’s claim for a recurrence of disability on the grounds that causal relationship was not established. It found that she did not establish a change either in the accepted condition or her light-duty job requirements.

In a July 11, 2008 letter, appellant, through counsel, requested reconsideration and submitted new medical evidence. In a March 2, 2007 report, Dr. Aleksic related appellant’s account of left knee swelling in July 2003. Appellant was placed on light duty in August 2003. She developed right knee swelling in November 2003 and underwent right knee surgery in February 2004 to repair torn cartilage. Dr. Aleksic diagnosed cervical and lumbar radiculopathy, internal derangement of both knees, the right wrist and right shoulder.

By decision dated September 18, 2008, the Office modified the July 17, 2007 decision. It found that appellant had not established that she sustained a recurrence of disability commencing July 15, 2003. The Office corrected its statement of her burden of proof, finding that the medical

¹ In September 7, 2002 x-rays of the left lower leg were negative for fracture. Appellant submitted September 11 and 18, 2002 reports from a podiatrist whose signature is illegible, diagnosing a left ankle sprain.

² On April 19, 2004 appellant filed a occupational disease (Form CA-2) claiming that she sustained neck, right arm, right shoulder, bilateral knee and bilateral hip injuries on September 7, 2002. The Office did not conduct additional development on this claim or issue a final decision. Therefore, this claim is not before the Board on the present appeal.

³ Appellant submitted physical therapy notes from March to November 2006 regarding her neck, knees hips and right arm.

evidence did not establish that the claimed July 15, 2003 recurrence of disability was causally related to the accepted September 7, 2002 injuries.⁴

In a September 8, 2009 letter, appellant, through counsel, requested reconsideration. Counsel asserted that Dr. Aleksic's reports were sufficient to establish that the September 7, 2002 workplace incident caused a right knee injury, resulting in the July 15, 2003 recurrence of disability and February 26, 2004 right knee surgery.⁵ He enclosed a copy of Dr. Aleksic's September 17, 2002 report.

By decision dated November 12, 2009, the Office denied modification on the grounds that the evidence submitted was insufficient to warrant modification.

LEGAL PRECEDENT

The Office's implementing regulations define a recurrence of disability as "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."⁶ When an appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified physician, who on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician's conclusion.⁷ An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.⁸

ANALYSIS

The Office accepted that on September 7, 2002, appellant sustained a contusion of the left lower extremity. She claimed a recurrence of total disability commencing July 15, 2003 related to this injury. Appellant has the burden to provide sufficient evidence, including rationalized medical opinion, to establish the causal relationship asserted.⁹

⁴ The Office also noted that the July 17, 2007 decision contained a nondispositive clerical error, referring to a July 15, 2007 recurrence of disability and not the claimed July 15, 2003 recurrence.

⁵ The record contains an October 22, 2009 decision approving counsel's attorney fee application, based on appellant's approval of the charges. This decision is not before the Board on the present appeal.

⁶ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter. 2.1500.3.b(a)(1) (May 1997). *See also Philip L. Barnes*, 55 ECAB 426 (2004).

⁷ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁸ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁹ *Ricky S. Storms*, *supra* note 7.

The Board finds that an intervening incident negated the causal relationship between the accepted lumbar injuries and appellant's condition as of July 15, 2003. Appellant stated that she experienced knee swelling while delivering mail on July 15, 2003. In essence, she asserted a new injury. The exposure to new work factors broke the chain of causation stemming from the accepted left lower extremity injury. The circumstances did not involve a spontaneous change in the accepted condition.¹⁰ For this reason, the Office's denial of the claimed recurrence of disability was proper under the law and facts of the case.¹¹

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability commencing July 15, 2003.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 12, 2009 is affirmed.

Issued: February 16, 2011
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

¹⁰ *Bryant F. Blackmon*, 56 ECAB 752 (2005).

¹¹ *Beverly A. Spencer*, 55 ECAB 501 (2004).