

**United States Department of Labor  
Employees' Compensation Appeals Board**

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M.W., Appellant )

and )

DEPARTMENT OF THE AIR FORCE, )  
EHRLING BERGQUIST HOSPITAL, OFFUTT )  
AIR FORCE BASE, NE, Employer )

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**Docket No. 07-1714  
Issued: December 20, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 13, 2007 appellant filed a timely appeal of an April 9, 2007 merit decision of an Office of Workers' Compensation Programs' hearing representative finding that she did not sustain an injury in the performance of duty on December 1, 2005.

**ISSUE**

The issue is whether appellant has established that she sustained an injury in the performance of duty on December 1, 2005.

**FACTUAL HISTORY**

On December 1, 2005 appellant, then a 54-year-old practical nurse, filed a traumatic injury claim alleging that on that date she hurt her right leg, knee and hip when she fell on ice in the employing establishment parking lot. She submitted several medical records covering intermittent dates from January 31, 2000 to October 24, 2005 regarding her cervical, lumbar, right leg and right elbow conditions. A November 11, 2005 operative report from

Dr. Hitendra B. Ghosh stated that appellant underwent a caudal block for low back pain and radiculopathy.<sup>1</sup> A November 11, 2005 medical report of Dr. Cheryle M. Manasil, a Board-certified radiologist, indicated that she performed a fluoroscopy of appellant's spine due to her chronic low back pain. Dr. Manasil stated that no images were acquired. In notes dated December 13, 2005 and January 9, 2006, Dr. John Harris, a Board-certified internist, found that appellant had bilateral hip and knee pain and right carpal tunnel syndrome. A December 7, 2005 magnetic resonance imaging (MRI) scan report of Dr. Jon J. Bleicher, a Board-certified radiologist, noted severe degenerative osteoarthritis changes of the right hip joint with no superimposed acute abnormality, a 1.4 centimeter subchondral cyst of the right femoral head, complete destruction of the normal right hip joint with bone marrow reactive changes of the acetabulum and femoral head and no acute post-traumatic change. A January 30, 2006 prescription of Dr. Erik T. Otterberg, a Board-certified orthopedic surgeon, ordered an injection of appellant's arthritic right hip.

By letter dated February 2, 2006, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she describe her preexisting right leg condition. The Office also requested that she provide a comprehensive well-rationalized narrative medical report from an attending physician, which included a description of her symptoms, results of examinations and tests, diagnosis of all conditions resulting from the alleged injury and an explanation of the cause of her condition.

In a January 30, 2006 report, Dr. Otterberg provided a history that appellant fell in 2000 and again in December 2005. He reviewed her medical background. On physical examination of the right hip, Dr. Otterberg reported limited range of motion and pain with internal and external rotation. He found approximately equal leg lengths, grossly intact motor sensory and skin and palpable distal pulses. X-ray examination of the pelvis and lateral hip demonstrated significant degenerative joint space loss superiorly, osteophyte formation on the femoral head, increased sclerosis in the acetabulum and a degenerative cyst that was subchondrally both in the femoral head and in the superior portion of the acetabulum. Dr. Otterberg diagnosed arthritis in the hip. In a February 7, 2006 treatment note, he indicated that appellant returned for a follow-up examination regarding a right hip injection. Dr. Otterberg stated that she would be a candidate for hip replacement in the future.

In a January 31, 2006 report, Dr. John A. Haggstrom, a Board-certified radiologist, stated that he successfully performed a fluoroscopic injection into appellant's right hip joint.

In a February 13, 2006 treatment note, Dr. Harris reiterated that appellant had chronic low back pain.

By decision dated March 6, 2006, the Office found that appellant did not sustain an injury in the performance of duty. The medical evidence of record failed to establish that her claimed right leg, knee and hip condition were caused by the accepted December 1, 2005 employment incident.

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<sup>1</sup> The Board notes that Dr. Ghosh's professional qualifications are not contained in the case record.

On April 3, 2006 appellant, through counsel, requested an oral hearing before an Office hearing representative. In reports dated March 28 and July 14, 2006, Dr. Harris reiterated his prior diagnoses of chronic low back pain and right carpal tunnel syndrome.

An April 25, 2006 report from Bellevue Clinic stated that appellant experienced back pain.

By letter dated February 27, 2007, an Office hearing representative denied appellant's February 9, 2007 request to have her scheduled hearing postponed due to impending right hip surgery or her attorney's trip to Mexico. She advised that a review of the written record would be conducted.

Dr. Otterberg's February 12, 2007 report stated that appellant recently underwent a total hip arthroplasty. He advised that she was unable to participate in the scheduled hearing because prolonged sitting was required.

In a March 28, 2006 report, Dr. Harris stated that on December 1, 2005 appellant aggravated her low back pain at work when she slipped on ice in the employing establishment parking lot. He noted her ongoing medical treatment. Dr. Harris opined that the December 1, 2005 employment incident aggravated her preexisting low back pain.

A December 1, 2005 x-ray report of Dr. Neil L. Sergel, a Board-certified radiologist, found evidence of a subchondral fracture of the weight bearing aspect of the femoral head on the right of unknown age and underlying severe osteoarthritic changes in the right hip. He also found no acute bony abnormality in her knees.

In an August 22, 2005 report, Dr. Harris advised that appellant may be absent from work due to increased back pain which radiated down her right leg. He reiterated that she also had right carpal tunnel syndrome. Dr. Harris opined that appellant had a 30 percent disability due to her chronic back pain. He attributed her low back pain to a January 2000 injury. Dr. Harris concluded that appellant had reached maximum medical improvement from her treatment.

A March 21, 2006 narrative statement from Technical Sergeant (T. Sergeant) Keri A. Winsick who witnessed appellant's fall on December 1, 2005. She immediately attempted to lift her. T. Sergeant Winsick stated that they were unable to get any traction but appellant was eventually able to get up on "all fours" and crawl to the sidewalk that was free of ice. She helped her on her feet and assisted her into the building. Appellant was visibly shaken and immediately complained of hip and leg pain.

By decision dated April 7, 2007, an Office hearing representative affirmed the March 6, 2006 decision, finding that the medical evidence of record was insufficient to establish that appellant sustained an injury causally related to the December 1, 2005 employment incident.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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 filed within applicable time limitation; that an injury was sustained while 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.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</sup>

In order to determine whether an employee actually sustained an 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, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>5</sup> In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.<sup>6</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>7</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.<sup>8</sup> The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.<sup>9</sup>

## ANALYSIS

The record supports that on December 1, 2005 appellant fell on ice in the employing establishment parking lot. The Board finds, however, that the medical evidence of record is

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 3.

<sup>5</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>6</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

<sup>8</sup> *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>9</sup> *Charles E. Evans*, 48 ECAB 692 (1997).

insufficient to establish that the accepted employment incident caused or contributed to appellant's right leg, knee or hip conditions.

The medical evidence covers intermittent dates from January 31, 2000 to October 24, 2005 and address appellant's preexisting cervical, lumbar, right leg and right elbow conditions. This evidence, however, predates the December 1, 2005 employment incident and fails to address whether the accepted employment incident caused or contributed to appellant's right leg, right knee and right hip conditions. This medical evidence is not probative on the issue before the Board.

The November 11, 2005 reports of Dr. Ghosh and Dr. Manasil reflect that appellant underwent a caudal block and fluoroscopy for low back pain and radiculopathy. The April 25, 2006 report from Bellevue Clinic stated that appellant experienced low back pain. These reports address her low back condition and not her right lower extremity. The reports from Dr. Ghosh, Dr. Manasil and Bellevue Clinic fail to address how appellant's back pain or radiculopathy were causally related to the December 1, 2005 employment incident.<sup>10</sup> Therefore, this evidence is of limited probative value.

Dr Harris advised that appellant had bilateral hip, knee and back pain and right carpal tunnel syndrome. In an August 22, 2005 report, Dr. Harris determined that appellant sustained a 30 percent disability due to her chronic back pain which dated back to a January 2000 injury. The Board finds that Dr. Harris failed to provide a definitive diagnosis regarding appellant's bilateral hip, knee and back conditions.<sup>11</sup> He addressed the causal relationship of these conditions and appellant's right carpal tunnel syndrome, to a January 2000 injury and not the December 1, 2005 incident at work.

On March 28, 2006 Dr. Harris stated that the December 1, 2005 employment incident aggravated appellant's preexisting low back pain. He failed to provide medical rationale to support his conclusion. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.<sup>12</sup> Moreover, he did not address appellant's right leg condition.

On January 30, 2006 Dr. Otterberg prescribed an injection for appellant's arthritic right hip which was performed by Dr. Haggstrom on January 31, 2006. In a January 30, 2006 report, Dr. Otterberg opined that appellant sustained arthritis in the hip based on physical and x-ray examination. On February 7, 2006 he indicated that appellant had an injection in her right hip and opined that she was a future candidate for hip replacement. Dr. Otterberg's February 12, 2007 report noted that appellant had undergone total hip arthroplasty and that she was unable to sit through her oral hearing because prolonged sitting was required. However, he failed to address whether appellant's right hip condition and physical limitations were caused or aggravated by the December 1, 2005 employment incident.

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<sup>10</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004); *see also Solomon Polen*, 51 ECAB 341, 343 (2000).

<sup>11</sup> *Robert Broome*, *supra* note 10.

<sup>12</sup> *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB \_\_\_\_ (Docket No. 05-715, issued October 6, 2005).

Appellant did not submit sufficient medical evidence to establish the causal relationship between her right leg, right knee and right hip conditions and the accepted December 1, 2005 employment incident. The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained an injury in the performance of duty on December 1, 2005. Therefore, she failed to meet her burden of proof.

**CONCLUSION**

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty on December 1, 2005.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 9, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 20, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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