

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

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**D.W., Appellant**

**and**

**DEPARTMENT OF THE NAVY,  
COMMANDER OF THE U.S. ATLANTIC  
FLEET -- SHIPYARDS, NORFOLK NAVAL  
SHIPYARD, Portsmouth, VA, Employer**

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**Docket No. 09-1318  
Issued: December 9, 2009**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On April 22, 2009 appellant filed a timely appeal from September 3, 2008 and April 13, 2009 merit decisions of the Office of Workers' Compensation Programs denying his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant satisfied his burden of proof to establish he sustained an injury in the performance of duty causally related to his employment.

**FACTUAL HISTORY**

On July 24, 2008 appellant, a 50-year-old painter, filed an occupational disease claim (Form CA-2) alleging he sustained Grade 4 chondromalacia in his left patella while pressure-washing an aircraft carrier's secondary shield tank. He alleged that his employment duties involve repetitive body movements and working in tight, confined spaces for long periods of

time. Appellant first realized his condition was caused by his federal employment on April 11, 2008.

In an April 22, 2008 report, Dr. Wilford K. Gibson, a Board-certified orthopedic surgeon, reported findings on examination, reviewed appellant's history of injury and diagnosed possible left-knee medial meniscus tear and chondromalacia in appellant's left patella. He noted that appellant continued to work and was working without restriction, but restricted him from kneeling, squatting and working heights for a three-week period.

On April 29, 2008 Dr. Daryl R. Fanney, a Board-certified diagnostic radiologist, reported a magnetic resonance imaging (MRI) scan of appellant's left knee revealed no meniscal or ligament tear. He diagnosed patellar Grade 4 chondromalacia, lateral patellar and trochlear Grade 2 chondromalacia and proximal tibiofibular joint osteoarthritis.

On May 15, 2008 Dr. Gibson diagnosed Grade 4 chondromalacia in his left patella. He noted that x-rays of appellant's knee were unremarkable, but that MRI scan examination showed Grade 4 chondromalacia of the patella and lateral patellar and trochlea Grade 2 chondromalacia. Dr. Gibson noted that appellant attributed his condition to pressure washing tanks in April 2008.

By decision dated September 3, 2008, the Office denied the claim because the evidence of record did not demonstrate that the employment factors caused a diagnosed medical condition.

On September 22, 2008 appellant requested an oral hearing.

A hearing was conducted on January 14, 2009. Appellant testified that he lost no time due to his injury and just wanted reimbursement for his medical bills. He described his employment duties. Appellant related that from approximately May through July 2008 he was required to crunch his body into small spaces and pressure wash a 3-foot by 40-foot tank. This task required holding onto a handrail, climbing and carrying a pressure washer.

By decision dated April 13, 2009, the hearing representative affirmed the Office's September 3, 2008 decision. The hearing representative accepted that appellant had identified employment factors but denied the claim because the medical evidence did not establish that the identified employment factors caused a medically-diagnosed condition.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of the 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 the 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>2</sup> These are essential elements of each and every

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> C.S., 60 ECAB \_\_\_\_ (Docket No. 08-1585, issued March 3, 2009).

compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>3</sup> To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>4</sup>

### ANALYSIS

In addition to pressure-washing, appellant identified climbing while holding onto a handrail and carrying a pressure washer as employment factors responsible for his condition. Appellant's burden is to establish that these employment factors caused a medically-diagnosed condition. Causal relationship is a medical issue that can only be proven through submission of probative, 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.<sup>5</sup> The Board finds that appellant has not satisfied his burden of proof and, consequently, he has not established he sustained an injury in the performance of duty causally related to his employment factors.

Although they diagnosed several conditions, including left knee chondromalacia, proximal tibiofibular joint osteoarthritis and possible left knee medial meniscus tear, Drs. Fanney's and Gibson's reports have no probative value on the issue of causal relationship because they lack an opinion explaining how the identified employment factors caused the conditions diagnosed.<sup>6</sup> This deficiency reduces the probative value of their opinions and reports such that they are insufficient to establish appellant's claim.

While appellant's physicians expressed an awareness of appellant's job duties and an awareness of appellant's contention that his job duties caused his left knee conditions, the medical reports of record offered no medical explanation as to how appellant's work caused his knee conditions.

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<sup>3</sup> *S.P.*, 59 ECAB \_\_\_\_ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>5</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>6</sup> *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). *See also Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

The Board has held the fact that a condition manifests itself or worsens during a period of employment<sup>7</sup> or that work activities produce symptoms revelatory of an underlying condition<sup>8</sup> does not raise an inference of causal relationship between a claimed condition and employment factors. Because appellant did not submit any probative medical evidence establishing that he sustained an injury from the accepted employment factors, the Office properly denied appellant's claim.

### **CONCLUSION**

The Board finds that appellant has not satisfied his burden of proof to establish he sustained an injury in the performance of duty causally related to his employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 13, 2009 and September 3, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued:  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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<sup>7</sup> *E.A.*, 58 ECAB \_\_\_\_ (Docket No. 07-1145, issued September 7, 2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

<sup>8</sup> *D.E.*, 58 ECAB \_\_\_\_ (Docket No. 07-27, issued April 6, 2007); *Fabian Nelson*, 12 ECAB 155, 157 (1960).