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JUANITA H. LAMPMAN, Appellant)	
)	
and)	Docket No. 04-883
)	Issued: April 4, 2005
DEPARTMENT OF THE NAVY, NAVAL)	
MEDICAL CENTER, Orlando, FL,)	
Employer)	
)	

Case Submitted on the Record

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

On February 18, 2004 appellant, through her attorney, filed a timely appeal of merit decisions of the Office of Workers' Compensation Programs dated April 3, 2003, which denied her recurrence of disability claim for the period January 4, 1995 to June 5, 1998 and January 20, 2004, which rejected her claim for a right knee injury causally related to a July 19, 1994 employment-related injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

The issues are: (1) whether appellant sustained a recurrence of disability commencing January 4, 1995 and continuing through June 5, 1998 causally related to her July 19, 1994 employment injury; and (2) whether appellant sustained a right knee injury on July 19, 1994.

FACTUAL HISTORY

On July 19, 1994 appellant, then a 63-year-old nurse, filed a claim alleging that as she was coming out of a patient's darkened room on that date, she slipped and fell injuring her left temple, left elbow, left hip and right hand. She initially did not stop work.

On September 1, 1994 the Office accepted that appellant sustained contusions of the left temple, left shoulder, left thigh, left elbow and right hand, a left distal radial fracture and cervical strain. She received compensation for wage loss and appropriate medical benefits. Appellant continued her employment as a nurse at the medical center until January 4, 1995 when the base was closed.

Appellant initially sought treatment with Dr. Thomas A. Stanford, a Board-certified orthopedic surgeon, on July 26, 1994 providing as history that she had fallen and injured her neck and left upper extremity. He treated her for neck pain, left upper extremity pain, a nondisplaced fracture in the proximal one-third of her ulna, epicondylitis of the lateral epicondyle of the elbow, right-sided cervical disc herniations at C4-5 and C5-6 and shoulder bursitis. At that time Dr. Stanford found that appellant was disabled and not able to do light work of any kind. He commented that, "even though she is anxious to work, she is not fit for work right now with the discomfort she is having." Appellant continued treatment with Dr. Stanford for steroid and pain medication injections every few weeks.

On January 17, 1995 Dr. Stanford noted that appellant complained of neck and shoulder pain and significant amount of cervical root neuropathy. He noted that her cervical condition impaired her ability to look up or raise objects above the shoulders. Dr. Stanford stated: "[Appellant's] nursing activities would have to be curtailed." He also referred to her left shoulder injury and opined, considering that she was a working, 64-year-old nurse, "[appellant] will not be able to return to her job as a working nurse because of this impairment."

On March 24, 1998 Dr. Stanford noted that appellant was seen for pain in her neck, shoulder and elbow and he noted: "[Appellant] also has pain in her knee. She had a fall in July 1994 and had a discolored thigh and knee. We treated her neck, shoulder and elbow but not actually her knee. However, since that time she has had worsening pain in her knee." Dr. Stanford opined that appellant had "knee arthritis" which was "aggravated and worsened from her workers' compensation injury in 1994."

On June 5, 1998 appellant completed a Form CA-7 requesting a schedule award and claiming wage loss compensation for the period January 4, 1995 through June 5, 1998.

On August 25, 1998, after administering injections, Dr. Stanford noted: "[Appellant] has a scar on her right knee and a scar on her scalp from that fall." On April 14, 1999 Dr. Stanford, in discussing the degree of appellant's impairment, noted that when she first presented to him she had had a severe fall, her face was swollen and "she had an abrasion over the right eye and right knee."

On August 24, 1999 the Office granted appellant a schedule award for a 20 percent impairment of her left upper extremity for the period December 31, 1998 to March 11, 2000, a total of 62.40 weeks of compensation.

On July 28, 1999 Dr. Stanford injected appellant's knees and noted: "For her workers' comp[ensation] injury, she mainly injured her knees and her neck." Thereafter he regularly aspirated material from appellant's right knee and injected steroids, pain medication and Synvisc.

By letter dated July 19, 2002, the Office requested that Dr. Stanford discuss his treatment of appellant's right knee in relation to his notes mentioning her knee condition. No response was forthcoming.

By decision dated April 3, 2003, the Office rejected appellant's claim for compensation for the period January 4, 1995 through June 5, 1998, finding that she did not establish that she was disabled during that period or that her right knee condition was related to the accepted July 19, 1994 work injury.

On May 7, 2003 appellant, through her attorney, requested an oral hearing before an Office hearing representative. A hearing was held on October 20, 2003 at which she testified.

Following the October 20, 2003 oral hearing, appellant's representative submitted a letter in which Dr. Stanford noted that he had been taking care of her for an accident which occurred on July 19, 1994 involving a fall while working. He noted that, besides injuring her neck, shoulder and left upper extremity, "she also injured her knee. This knee had been bothering her from the time of the [w]orkers' [c]omp[ensation] injury to the present time and has reached the point that the pain is unbearable." Dr. Stanford noted treatment consisting of cortisone injections and he opined that her mild to moderate osteoarthritis of the knee would actually worsen to severe arthritis and she would become a candidate for a total knee procedure.

By decision dated January 20, 2004, the hearing representative rejected appellant's claim for a right knee injury and found that she had failed to establish that she was totally disabled for the period January 4, 1995 through June 5, 1998.

LEGAL PRECEDENT -- ISSUE 1

As used in the Federal Employees' Compensation Act,¹ the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.² An individual who claims a recurrence of disability due to an accepted employment injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the

¹ 5 U.S.C. §§ 8101-8193.

² *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f). Disability is not synonymous with physical impairment. An employee who has a physical impairment, even a severe one, but who has the capacity to earn the wages she was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to disability compensation.

accepted injury. This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴ Causal relationship is a medical issue and can be established only by medical evidence.⁵

The Federal (FECA) Procedural Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (January 1998/April 1997) defines a recurrence as follows:

“Recurrence of Disability. This term includes certain kinds of work stoppages, which occur after an employee has returned to work after a period of disability.

(1) It includes a work stoppage caused by:

(a) spontaneous material change, demonstrated by objective findings, in the medical condition which resulted from a previous injury or occupational illness *without an intervening injury or new exposure to factors causing the original illness*;⁶ (Emphasis added.)

(b) A return or increase of disability due to an accepted consequential injury; or

(c) Withdrawal of a light-duty assignment made specifically to accommodate the claimant's condition due to the work-related injury. This withdrawal must have occurred for reasons other than misconduct or nonperformance of job duties.

(2) *It does not include* a work stoppage caused by the following factors (*see* Federal (FECA) Procedure Manual, Part 2, Chapter 2.0814.12 concerning these situations): (Emphasis in the original.)

(a) Termination of a temporary appointment, if the claimant was a temporary employee at the time of the injury;

(b) Cessation of special funding for a particular position or project (*e.g.* ‘pipeline’ grants);

³ *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

⁴ *Michael Stockert*, 39 ECAB 1186 (1988).

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁶ *See also* 20 C.F.R. § 10.5(x).

(c) True reductions-in-force (RIFs) where employees performing full duty as well as those performing light duty are affected:

(d) *Closure of a base or other facility.*” (Emphasis added.)

Further, when an employee claims a recurrence of or continuing disability causally related to an accepted employment injury, she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed period of disability is causally related to the accepted injuries or conditions.⁷ A recurrence of disability is defined as a spontaneous material change in the employment-related condition without an intervening injury.⁸ A claimant’s burden of proof in establishing a recurrence of disability requires the submission of medical evidence from a 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 and supports that conclusion with sound medical reasoning.⁹

ANALYSIS -- ISSUE 1

Appellant sustained an injury on July 19, 1994 accepted for contusions of the left temple, shoulder, elbow, a radial fracture and a cervical strain. She returned to work doing regular nursing duties with certain upper body activities restrictions and worked until the base closed on Thursday, January 4, 1995. Appellant did not stop work due to her right knee condition or to a recurrence related to 1994 accepted injuries.

Merely because the employing establishment closed and the base was deactivated and appellant was forced to stop work, does not establish that the accepted injuries caused total disability.¹⁰ When the employing establishment closed, she was performing regular nursing duties with upper body restrictions. The reason for her work stoppage was the base closing and not residuals of her accepted employment injuries.

Appellant has the burden of proof to establish that she became totally disabled due to her employment injuries, by submitting rationalized medical evidence supporting a causal relationship between her onset of total disability and her work-related residuals. She did not meet this burden as the medical evidence appellant submitted supported only that she continued to be treated for cervical disc herniations, inflammation and bursitis.

In 1994 and 1995, appellant was treated by Dr. Stanford, who provided steroid and pain medication injections every few weeks. He noted her neck and shoulder pain and cervical neuropathy, noted that her nursing activities would have to be curtailed, noted her left shoulder

⁷ *Carmen Gould*, 50 ECAB 504 (1999); *see also Helen K. Holt*, 50 ECAB 279 (1999).

⁸ *See, e.g., Carlos A. Marrero*, 50 ECAB 117 (1998).

⁹ *See Helen K. Holt*, *supra* note 7.

¹⁰ *See Terry L. Adams*, (Docket No. 00-1859, issued May 18, 2001).

injury and opined that she would not be able to return to her regular nursing job. These contemporaneous reports did not address any of these complaints.

On July 28, 1999 Dr. Stanford treated appellant's right knee and neck, but the Board finds that he did not explain how her right knee condition created disability during the period January 4, 1995 through June 5, 1998 or how her right knee condition was related to her accepted July 19, 1994 work injury, which was accepted for contusions of the left temple, shoulder, elbow, a radial fracture and a cervical strain.

Appellant submitted multiple medical progress notes from Dr. Stanford which noted her ongoing treatment for her fall injuries. He noted that she had residuals from her July 19, 1994 fall, but the Board finds that his reports do not contain any rationalized medical opinion relating appellant's condition on January 4, 1995 to her July 19, 1994 employment injury. No functional capacity evaluation was accomplished to determine her actual working capacity or limitations. Appellant was anxious to return to work, although she had been unable to do certain facets of her nursing job and she worked without documented problems until the employing establishment closed.

As appellant has not presented rationalized medical evidence establishing a causal relationship between her current condition due to right knee problems, which were not accepted as being employment related and her inability to work, the Board finds that she has not met her burden of proof to establish her recurrence claim. Her physical disability or lack of probative medical evidence did not contribute to her discharge under the reduction-in-force with the base closing as of January 4, 1995 and, therefore, she did not experience a compensable recurrence of total disability.

LEGAL PRECEDENT -- ISSUE 2

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.¹¹ Second, she must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.¹²

As part of this burden, she must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and the implicated factors of her federal employment.¹³ Causal relationship is a medical issue that can be established only by rationalized medical evidence.¹⁴

¹¹ *John J. Carlone*, 41 ECAB 354 (1989).

¹³ *Steven R. Piper*, 39 ECAB 312 (1987); see 20 C.F.R. § 10.110(a).

¹⁴ *Mary J. Briggs* and *Ausberto Guzman*, *supra* note 5.

ANALYSIS ISSUE -- 2

The Board finds that appellant has not met her burden of proof in establishing that she sustained a right knee injury on July 19, 1994 or thereafter until the base closed, which caused her to stop work.

The Office accepted that on July 19, 1994 appellant fell and sustained contusions of the left temple, left shoulder, left thigh, left elbow and right hand and a left distal radial fracture and cervical strain. None of the medical evidence at that time mentioned a right knee contusion or injury. In his March 24, 1998 report, four years after the 1994 injury, Dr. Stanford first mentioned that appellant had pain in her knee, but he did not specify which knee. He stated that she had had a fall in July 1994 and had a discolored thigh and knee, but again he did not specify which knee and he noted that he treated appellant for neck, shoulder and elbow contusions but not actually her knee. Dr. Stanford opined that she had "knee arthritis" which was aggravated and worsened from her workers' compensation injury in 1994," but he provided no explanation as to why she did not complain of such aggravation or worsening until four years later.

Appellant has not submitted medical evidence sufficient to establish that she sustained a right knee condition, causally related to her July 19, 1994 employment injury, nor has she explained why she believes that such a relationship exists. Dr. Stanford's medical progress notes merely report on the status of her various conditions and do not contain any rationale as to a causal relationship between these conditions and appellant's employment. The diagnosed degenerative processes of her body are typical of her age and are not unique to the employment relationship that has been identified. Dr. Stanford has not provided any rationalized medical report which would support that the claimed right knee condition developed because of appellant's employment or was the result of any factor of employment alleged by appellant.

There is no contemporaneous medical evidence of record that supports that appellant sustained a right knee injury at the time of her July 19, 1994 fall and no subsequent medical opinion which explained why it did not become an active condition from 1994 until 1998.

Consequently, appellant has not met her burden of proof to establish that she sustained a right knee condition in the performance of duty on July 19, 1994.

CONCLUSION

The Board finds that there is no contemporaneous medical evidence of record that supports that appellant sustained a right knee injury at the time of the July 19, 1994 fall and no subsequent medical opinion which explained why it did not become an active condition until March 24, 1998. There is also no evidence of record which supports that she became totally disabled commencing January 5, 1995, the date of the employing establishment closure, causally related to her July 19, 1994 employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensations dated January 20, 2004 and April 3, 2003 are affirmed.

Issued: April 4, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member