

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability commencing September 29, 2003 due to a worsening of her accepted right knee conditions; and (2) whether appellant has established that she sustained a consequential gastrointestinal (GI) condition causally related to medications prescribed to treat the accepted right knee conditions. On appeal, appellant alleged that the Office did not send adequate information “about [her] injury to the doctor,” failed to communicate with her attending physician and “seemed to be biased about [her] case.”

FACTUAL HISTORY

The Office accepted that on May 6, 1998, appellant, then a 46-year-old health technician, fell on the floor at work and sustained a right knee sprain, a right knee medial meniscus tear and traumatic arthritis of the right knee, requiring arthroscopic surgery on September 2, 1998 and June 19, 2000. She received wage-loss compensation beginning on June 12, 1998. The employing establishment terminated appellant effective June 12, 1998, during her one-year probationary period.

Appellant was treated initially by Dr. Essam Elmorshidy, an attending orthopedic surgeon. On September 2, 1998 he performed an arthroscopic repair of a right medial meniscus tear and debridement of severe chondromalacia of the medial femoral condyle and patella. Following Dr. Elmorshidy's death, appellant was treated by Dr. Alain F. Cracco, an attending Board-certified orthopedic surgeon. In a December 29, 1998 report, Dr. Cracco found a restricted range of right knee motion with swelling. Dr. Cracco prescribed Lodine and Vicodin. On March 15, 1999 Dr. Cracco approved a job description for an electrocardiogram (EKG) technician at a private sector hospital.¹ Appellant began working in the EKG technician position full time beginning May 4, 1999.²

Dr. Cracco submitted periodic reports through March 14, 2000, diagnosing arthrosis of the right knee and prescribing 400 milligrams (mgs) of Motrin 3 times a day. He held appellant off work intermittently due to right knee inflammation and patellar grinding.³ He newly prescribed Theragesic and Talacen on December 27, 1999. On June 19, 2000 Dr. Cracco performed arthroscopic chondroplasty of the medial femoral condyle and femoral patellar joint. After surgery, Dr. Cracco resumed Motrin. He held appellant off work through December 2000, due to effusion, synovitis and grinding in the right knee. Following vocational development by the Office and a release by Dr. Cracco, appellant began part-time work at the employing establishment on January 16, 2001 in a modified, sedentary clerical position. She resumed full-time work in June 2001.

Dr. Cracco submitted periodic reports through February 2002, holding appellant off work intermittently due to continued effusion and patellar grinding. He prescribed 800 mgs of Motrin 3 times a day. On February 15, 2002 Dr. Cracco newly prescribed Tylenol #3 and Celebrex. He explained in an April 1, 2002 report, that he prescribed Celebrex as other anti-inflammatories had caused GI irritation.⁴ He continued to hold appellant off work intermittently

¹ As the employing establishment declined to reemploy appellant in a light-duty position, the Office authorized vocational rehabilitation services.

² The Office determined that appellant had a 33 percent loss of wage-earning capacity. She continued to receive wage-loss compensation on the daily and periodic rolls.

³ A May 12, 1999 magnetic resonance imaging scan of the right knee showed chondromalacia of the patella, a possible tear of the posterior horn of the medial meniscus and a small vertical tear of the anterior horn of the lateral meniscus.

⁴ On April 30, 2002 the Office awarded appellant a schedule award for a 42 percent impairment of the right lower extremity.

through October 2002. On January 27, 2003 Dr. Cracco newly prescribed Parafon in addition to Celebrex.⁵ He held appellant off work intermittently through August 2003.

In a September 5, 2003 report, Dr. Cracco noted additionally limited range of motion and increasing effusion in the right knee, noting appellant's account that "the anti-inflammatory ha[d] been irritating her stomach." He prescribed Celebrex and Pepcid. He held appellant off work through September 7, 2003.

In a September 29, 2003 report, Dr. Cracco stated that appellant presented crying, unable to bear weight on her right leg. He noted swelling, effusion and restricted motion of the right knee, as well as synovitis of the first metatarsal phalangeal joint of the right foot. He prescribed Medrol as an anti-inflammatory and Xanax for anxiety. Dr. Cracco explained that appellant was afraid of losing her job as her supervisor did not understand the severity of her condition. He held appellant off work indefinitely.⁶

In an October 20, 2003 report, Dr. Cracco stated that appellant's diverticulosis and irritable bowel syndrome were aggravated by work stress. Dr. Cracco prescribed Celebrex, noting that "Vioxx ha[d] been discontinued due to [appellant's] GI symptoms."

On November 3, 2003 appellant filed a claim for compensation (Form CA-7) for wage loss beginning September 29, 2003. The Office developed this form as a claim for a recurrence of disability.

In a December 2, 2003 report, Dr. Cracco noted that appellant underwent a partial colon resection to treat diverticulitis and was discharged from the hospital on November 22, 2003. He stated that Relafen, Vioxx, Celebrex and Motrin "could have contributed to some degree to the diverticulitis." He opined that "walking and pushing" at work aggravated appellant's knee, requiring "a substantial amount of anti-inflammatory medication for a long period of time, which may have induced or exacerbated the diverticulitis to the point that it required surgical treatment...." Dr. Cracco opined in a January 13, 2004 report that appellant could perform entirely sedentary work but could not resume her current position.

In a January 22, 2004 letter, the Office advised appellant of the deficiencies in the evidence of record and of the type of evidence needed to establish her claim for recurrence of disability. The Office noted that Dr. Cracco held her off work because of a stressful work environment, whereas her "case [was] not accepted for a diagnosis of stress."

In a February 4, 2004 letter, Dr. Cracco stated that he held appellant off work due to her right knee and GI conditions, not stress. He explained that appellant had lost 30 pounds due to diverticulitis. "She had been taking "Relafen, Vioxx, Celebrex and Motrin in the past and this

⁵ In a March 3, 2003 note, Dr. Cracco recommended that appellant work from 8:00 a.m. to 4:30 p.m. "to accommodate effects of medication on sleep." He submitted progress reports through August 2003, holding appellant off work intermittently.

⁶ In a September 29, 2003 certificate, an employee of Dr. Cracco's office stated that appellant could not resume work without a vocational rehabilitation evaluation as appellant's "work condition too stressful for [her]." Dr. Cracco did not sign this certificate.

may have exacerbated and contributed to the diverticulitis.” He noted that as appellant could no longer tolerate anti-inflammatory medications, she had developed increasing effusion, swelling and pain in the right knee.

On May 28, 2004 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that she sustained a recurrence of disability commencing September 28, 2003⁷ causally related to the accepted May 6, 1998 right knee injury. She explained that medication prescribed to treat the accepted right knee condition caused severe GI side effects. On the reverse of the form, the employing establishment noted that appellant had complained of “stomach pains” prior to stopping work.

In support of her claim, appellant submitted three reports from Dr. Cracco addressing her GI condition. In a June 1, 2004 report, Dr. Cracco explained that appellant’s GI “bleeding and diverticulosis [were] symptomatic secondary to the anti-inflammatory medication.” Dr. Cracco opined that appellant could not resume work as she required a “strictly sedentary” assignment and vocational rehabilitation.⁸ In an August 31, 2004, report, he noted that appellant was “on an anti-inflammatory medication for a long time and it caused ... bleeding colitis” necessitating an emergency colon resection.” In a September 22, 2004 report, Dr. Cracco opined that appellant’s GI bleeding was “definitely related” to the anti-inflammatory medication prescribed for the right accepted knee injury, with some effect from work stress. He stated that he “strongly believe[d] that the GI complication that [appellant] had [was] related in part to the anti-inflammatory medication that she ha[d] been taking for a long time for the [accepted] injury and this is documented well in the literature.”

By decision dated December 8, 2004, the Office denied appellant’s claim for a recurrence of disability commencing September 29, 2003, on the grounds that she submitted insufficient evidence to establish either a change in the nature and extent of her accepted condition or her light-duty requirements.⁹ The Office further found that appellant submitted insufficient evidence to establish a causal relationship between treatment for her accepted knee condition and a GI condition.

LEGAL PRECEDENT -- ISSUE 1

As used in the Federal Employees’ Compensation Act,¹⁰ the term “disability” means incapacity, because of an employment injury, to earn the wages that the employee was receiving

⁷ Although appellant used the date September 28, 2003 in her claim form, the remainder of the case record indicates that the correct date is September 29, 2003.

⁸ In a June 10, 2004 letter, the Office advised Dr. Cracco that a vocational rehabilitation nurse could not be assigned to appellant’s case as appellant had been working light duty successfully since June 13, 2001. The Office advised Dr. Cracco that appellant had the burden of proof to submit either rationalized medical evidence showing a change in the accepted condition or a change in the nature and extent of her light-duty assignment.

⁹ Appellant submitted new medical evidence accompanying her request for appeal. The Board may not consider new evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).

¹⁰ 5 U.S.C. §§ 8101-8193.

at the time of injury.¹¹ A recurrence of disability is defined by Office regulations as an inability to work, caused by a spontaneous change in a medical condition resulting from a previous injury or illness without an intervening injury or new exposure to the work factors that caused the original injury or illness.¹²

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹³ This 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 employment factors and supports that conclusion with sound medical reasoning.¹⁴ An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.¹⁵

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such an opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and that such a relationship must be supported with affirmative evidence, explained by medical rationale and be based on a complete and accurate medical and factual background of the claimant.¹⁶ Medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to establish causal relation.¹⁷

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a right knee sprain, a right knee medial meniscus tear and traumatic arthritis of the right knee, requiring arthroscopic surgery on September 2, 1998 and June 19, 2000, due to the May 6, 1998 injury. She received wage-loss compensation beginning on June 12, 1998. Appellant performed light duty with intermittent

¹¹ *Prince E. Wallace*, 52 ECAB 357 (2001).

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB ____ (Docket No. 03-205, issued June 19, 2003).

¹³ *Albert C. Brown*, 52 ECAB 152 (2000); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

¹⁴ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *see Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

¹⁵ *Patricia J. Glenn*, 53 ECAB 159 (2001); *Ausberto Guzman*, 25 ECAB 362 (1974).

¹⁶ *Conard Hightower*, 54 ECAB ____ (Docket No. 02-1568, issued September 9, 2003).

¹⁷ *Albert C. Brown*, *supra* note 13.

absences through September 29, 2003, when she stopped work. On November 3, 2003 appellant filed a claim for total disability commencing September 29, 2003. The Office developed this form as a claim for recurrence of disability. Appellant also filed a formal claim for recurrence of disability on May 28, 2004 alleging that medication prescribed to treat the accepted knee condition caused or aggravated a GI condition, requiring surgical resection of her colon. In order to prevail, appellant must demonstrate either a change in the nature and extent of her accepted right knee conditions or in her light-duty job requirements.¹⁸

Appellant did not assert a change in her sedentary clerical duties. Rather, she asserted that she was medically disabled for work as of September 29, 2003 due, in part, to a worsening of the accepted right knee condition.

In support of her claim, appellant submitted a September 29, 2003 report from Dr. Cracco, who found that appellant was unable to bear weight on her right leg, noting that she presenting crying and was very upset. However, he attributed appellant's emotional state to her account of work-related stress, not to the accepted right knee condition. Also, Dr. Cracco did not describe an organic, objective worsening of appellant's right knee condition, causally related to the accepted May 6, 1998 injury. While he held appellant off work indefinitely beginning September 29, 2003, he did not opine that this was because the accepted right knee conditions had worsened as of that day. Thus, Dr. Cracco's report is insufficiently rationalized to support an objective change in the nature and extent of the accepted right knee condition as of September 29, 2003.¹⁹ Therefore, appellant has not met her burden of proof in establishing that she sustained a recurrence of disability due to an objective worsening of the accepted right knee conditions.

LEGAL PRECEDENT -- ISSUE 2

The basic rule respecting consequential injuries, as expressed by Professor Larson in his treatise, is that "when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment."²⁰ The subsequent injury "is compensable if it is the direct and natural result of a compensable primary injury."²¹ With regard to consequential injuries, the Board has stated that where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury is deemed, because of the chain of causation, to arise out of and be in the course of employment.²²

¹⁸ *Supra* note 13.

¹⁹ See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports lacking rationale on causal relationship are entitled to little probative value).

²⁰ A. Larson, *The Law of Workers' Compensation* § 13.00 (2000).

²¹ *Id.* at § 13.11.

²² *Margarette B. Rogler*, 43 ECAB 1034, 1038 (1992).

As set forth above, the claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or factors of employment. As part of this burden the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing a causal relationship.²³

ANALYSIS -- ISSUE 2

Appellant first alleged that she sustained a GI condition in the May 28, 2004 claim form for a recurrence of disability. She asserted that she was totally disabled for work as of September 29, 2003 due to a GI condition caused or aggravated by anti-inflammatory medication prescribed to treat the accepted right knee conditions. Appellant's claim for a GI condition constitutes a claim for a consequential condition related to treatment for the accepted right knee conditions. The Office denied her claim for a GI condition in its December 8, 2004 decision, on the grounds she had not established causal relationship. Thus, it must now be determined whether appellant submitted sufficient medical evidence to establish that she sustained a GI condition as a consequence of the accepted right knee conditions.

The record establishes that beginning on December 29, 1998, Dr. Cracco, an attending Board-certified orthopedic surgeon, prescribed a variety of medications to treat inflammation and related pain in appellant's right knee: Celebrex; Lodine; Medrol; Motrin; Parafon; Talacen; Theragesic; Tylenol #3; Vicodin; and Vioxx. Dr. Cracco also opined in a number of reports that several of these medications caused gastric irritation or GI symptoms. He explained in an April 1, 2002 report that, he switched appellant to Celebrex as other anti-inflammatories had caused GI irritation. Dr. Cracco prescribed Pepcid, an antacid, on September 5, 2003 as the prescribed anti-inflammatories had irritated appellant's stomach. In an October 20, 2003 report, Dr. Cracco noted that he prescribed Celebrex as Vioxx caused appellant GI symptoms.

Dr. Cracco also opined that anti-inflammatory medication caused or exacerbated diverticulitis and GI bleeding. On December 2, 2003 he stated that Relafen, Vioxx, Celebrex and Motrin "could have contributed in some way to the diverticulitis," as appellant had taken "a substantial amount of anti-inflammatory medication for a long period of time," which may have induced or exacerbated the diverticulitis" until surgery was required. In a February 4, 2004 report, Dr. Cracco reiterated that Relafen, Vioxx, Celebrex and Motrin "may have exacerbated and contributed to the diverticulitis." He opined that in June 1, 2004, appellant's GI "bleeding and diverticulosis [were] symptomatic secondary to the anti-inflammatory medication." In an August 31, 2004 report, Dr. Cracco stated that prolonged use of anti-inflammatory medication caused "bleeding colitis" necessitating emergency surgery." On September 22, 2004 Dr. Cracco opined that the anti-inflammatory medication he prescribed to treat the accepted right knee injury had "definitely" caused appellant's GI bleeding. He stated that he "strongly believe[d] that the GI complication [appellant] had [was] related in part to the anti-inflammatory medication that she ha[d] been taking for a long time for the [accepted] injury and this is documented well in the literature."

²³ Brian E. Flescher, 40 ECAB 532 (1989).

Thus, Dr. Cracco opined consistently in reports from April 1, 2002 to September 22, 2004, that the anti-inflammatory medications he prescribed to treat appellant's right knee caused gastric irritation, GI bleeding and either aggravated or precipitated diverticulitis. Although Dr. Cracco's opinion is not sufficiently rationalized²⁴ to meet appellant's burden of proof in establishing causal relationship, it is consistent, definite, detailed and stands uncontroverted in the record. Therefore, it is sufficient to require further development by the Office.²⁵ However, the Office did not undertake further development of this aspect of the claim. The Board finds that under the circumstances of this case, Dr. Cracco's opinion was sufficiently relevant and compelling to warrant further development.

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility to see that justice is done.²⁶ Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in a proper manner. Therefore, the Board finds that the case must be remanded to the Office for further development regarding Dr. Cracco's opinion that medications he prescribed to treat appellant's accepted right knee conditions caused or aggravated GI bleeding, colitis or diverticulitis. The Office should request that Dr. Cracco submit a supplemental, clarifying report on this issue. If Dr. Cracco cannot provide such a report, the case should be referred to an appropriate specialist or specialists to obtain a rationalized opinion as to whether the prescribed anti-inflammatory medications caused or aggravated any GI condition. Following this and any other development deemed necessary, the Office shall issue an appropriate decision in the case.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability commencing September 29, 2003, causally related to accepted right knee conditions. The Board further finds that the case is not in posture for a decision regarding whether appellant has established a consequential GI injury, as the case must be remanded to the Office for further development on this issue.

²⁴ See *Jimmie H. Duckett*, *supra* note 19.

²⁵ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

²⁶ *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 8, 2004 is set aside, in part, regarding the issue of the consequential condition and the case remanded to the Office for further development consistent with this opinion. The Office's December 8, 2004 decision is affirmed, in part, regarding the denial of appellant's claim for a recurrence of disability commencing September 29, 2003 causally related to the accepted right knee conditions.

Issued: September 12, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board