United States Department of Labor
Employees' Compensation Appeals Board

S.G., Appellant	)	
and	)	**Docket No. 08-2556**
	)	**Issued: June 4, 2009**
DEPARTMENT OF VETERANS AFFAIRS, CLEVELAND VETERANS ADMINISTRATION MEDICAL CENTER, Brecksville, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
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 September 22, 2008 appellant filed a timely appeal from an August 6, 2008 merit decision of the Office of Workers' Compensation Programs' Branch of Hearings and Review denying modification of a February 27, 2008 merit decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3 the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant has established that she sustained a traumatic injury in the performance of duty on November 7, 2007.

FACTUAL HISTORY

On November 23, 2007 appellant, a 61-year-old nurse, filed a traumatic injury claim (Form CA-1) for a right knee injury on November 7, 2007. She attributed her injury to an incident when, during routine nursing care, she experienced pain and swelling in her right knee with attendant restriction in movement.

Appellant submitted a medical note dated November 20, 2007 signed by Steven J. Raab, a physician's assistant, who reported that appellant stated that she was unsure how she injured herself, but noticed that her right knee was swollen and painful. She did not report it at the time she noticed the swelling and pain as she was scheduled for wrist surgery. Appellant's orthopedic surgeon evaluated her knee following the wrist surgery and treated the knee with a steroid injection.

Dr. Bruce T. Cohn, a Board-certified orthopedic surgeon, in a work capacity evaluation dated December 10, 2007 diagnosed appellant with knee lateral and collateral sprains and strains. In a subsequent medical report dated December 17, 2007, he reported that a weight bearing x-ray revealed no fracture or dislocation. Dr. Cohn noted bone-on-bone changes involving the lateral compartment of the right knee and some narrowing of the medial compartment of the left knee. He recommended light-duty work for two weeks.

By report (Form CA-20), Dr. Cohn diagnosed appellant with possible meniscal tear and exacerbation of osteoarthritis. Although he advised appellant that she could return to work, he restricted her to four hours of light-duty work per day.

By letter dated December 27, 2007, the Office notified appellant it had received her completed CA-1 and noted that additional information was necessary including a description of the alleged incident occurring at work on November 7, 2007 and a medical report containing a diagnosis and medical opinion causally relating the diagnosed condition and the work incident.

In a December 31, 2007 medical report, Dr. Cohn provided updated examination findings. He renewed his diagnosis of sprain and strains of the knee lateral and collateral ligament. Dr. Cohn also added right knee sprain, osteoarthrosis, localized lower leg. He also noted a possible right knee medial meniscal tear, but that this diagnosis required a magnetic resonance imaging (MRI) scan to confirm. There is no evidence of record indicating that an MRI scan was conducted. Furthermore, in a January 28, 2008 medical report, Dr. Cohn diagnosed appellant with right knee sprain/strain and recommended appellant undergo arthroscopic surgery with partial medial and lateral menisectomy.

In a letter dated January 14, 2008, appellant provided additional information. She advised that November 7, 2007 had been a hectic day at work. Appellant stated that she was getting a patient ready for transport to x-ray when she felt a crunch and pain in her right knee. She stated that she continued working, but her knee began to swell. Appellant mentioned the incident to a few colleagues, but could not locate her supervisor and she could not report to the health unit, as it had already closed for the day. She stated that she was scheduled for right wrist surgery the next day, and she mentioned it to her physician at that time.

By decision dated February 7, 2008, the Office denied appellant's claim because the evidence of record was not sufficient to establish that she sustained an injury as defined by the Federal Employees' Compensation Act.

Appellant disagreed and requested an oral hearing.

By letter dated March 3, 2008, Dr. Cohn requested that the diagnosed conditions of dislocation of knee, tear of medial/lateral cartilage and exacerbation of osteoarthritis "be allowed

on this workers' compensation claim as I feel within a reasonable degree of medical certainty, that these conditions are related to her injury of November 7, 2007." Regarding appellant's history of injury Dr. Cohn explained as follows:

> "Information was incorrectly documented in my chart for the initial visit for this injury. She has told me about her knee problem the day before as we were planning on surgery for her wrist. The accurate information is as follows. [Appellant] injured her right knee while at work on November 7, 2007. At the time she was assisting a patient in to a wheelchair and felt a crunch in her right knee along with tightening. The knee started to swell and became very painful This happened in the middle of the day and she continued to work because it was very busy…."

And in a separate treatment report, Dr. Cohn diagnosed appellant with right knee sprain.

By letter dated May 5, 2008, the Office notified appellant that a hearing was scheduled for June 10, 2008 at 8:30 am. It advised appellant and her representative to be present.

The hearing was held at which appellant and her attorney were present.

By decision dated August 6, 2008, affirmed the Office's February 7, 2008 decision. The Office's hearing representative accepted that the evidence of record and appellant's testimony was sufficient to establish fact of injury. However, the hearing representative also found that the medical evidence of record was insufficient to establish that appellant's alleged injury was causally related to an employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Act[1] 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 timely filed within the applicable time limitation period of the Act, that an injury was sustained 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[2]

Section 10.5(ee) of Office regulations defines a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[3] To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether fact of injury is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.

[1] 5 U.S.C. §§ 8101-8193.

[2] *Gary J. Watling*, 52 ECAB 278 (2001).

[3] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[4]

Causal relationship is a medical issue, and the medical evidence opinion required to establish a causal relationship is rationalized medical evidence.[5] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[6] 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.[7] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[8]

ANALYSIS

The Office accepted that the incident occurred as alleged on November 7, 2007, that is appellant felt a crunch and pain in her right knee while assisting a patient for transport to the x-ray department. The issue is whether the medical evidence of record establishes that appellant's knee condition is causally related to this employment-related incident. The Board finds the medical evidence of record insufficient to establish that appellant's knee condition is causally related to factors of appellant's employment or an employment-related event.

Mr. Raab's report is of no probative value because health care providers such as nurses**,** acupuncturists, physician's assistants and physical therapists are not physicians under the Act.[9] Because the opinions of layman have no evidentiary value in regard to a medical issue such as the one involved in this case, Mr. Raab's report is insufficient to meet appellant's burden.[10]

The relevant medical evidence consists of notes and reports issued by Dr. Cohn. But none of these reports and medical notes contains a rationalized medical opinion concerning the

[4] *Gary J. Watling, supra* note 2.

[5] *M.W.*, 57 ECAB 710 (2006).

[6] *D.D.*, 57 ECAB 734 (2006).

[7] *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

[8] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[9] 5 U.S.C. § 8101(2); *see also Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

[10] *See William E. Enright*, 31 ECAB 426 (1980).

required causal relationship and, therefore, they are of little probative value. The Board has consistently held that medical reports lacking a rationale on causal relationship have little probative value.[11] As noted above, a rationalized medical opinion is based on a complete factual and medical background and is supported by medical rationale.[12]

Moreover, a physician's opinion on the causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician.[13] The opinion of a physician supporting causal relationship must be based on a complete and accurate medical and factual background, supported with affirmative evidence and explained by medical rationale.[14]

While Dr. Cohn presented findings upon examination and stated a diagnosis, right knee dislocation, with tear of the medial/lateral cartilage and exacerbation of osteoarthritis, he proffered no rationalized medical reasoning or opinion concerning the causal relationship between appellant's right knee conditions and appellant's federal employment-related incident. Dr. Cohn failed to explain how physiologically the activity appellant performed while assisting a patient ready for transport, would have caused the diagnosed conditions. He merely stated an affirmative opinion regarding causal relationship. Therefore, Dr. Cohn's medical reports and notes are of limited probative value and are insufficient to satisfy appellant's burden.

The fact that a disease or condition becomes apparent during a period of employment or appellant's belief that the disease or condition is caused or aggravated by the conditions of employment is insufficient to establish causal relation.[15] This is a medical issue. As there is no rationalized medical evidence of record establishing that appellant's right knee sprain was caused or aggravated by her federal employment duties as alleged, the Board finds that she has failed to meet her burden of proof.

CONCLUSION

The Board finds that appellant has not established that she sustained a traumatic injury in the performance of duty on November 7, 2007.

[11] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

[12] *Froilan Negron Marrero*, 33 ECAB 796 (1982).

[13] *Jean Culliton*, 47 ECAB 728, 735 (1996).

[14] *Robert Broom*, 55 ECAB 339 (2004); *Patricia J. Glenn*, 53 ECAB (2001).

[15] *See Neal C. Evins*, 48 ECAB 252 (1996); *Ronald M. Cokes*, 46 ECAB 967 (1995). *See also, Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

ORDER

IT IS HEREBY ORDERED THAT the August 6, 2008 decision of the Office of Workers' Compensation Programs' Branch of Hearings and Review is affirmed.

Issued: June 4, 2009
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