

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

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D.G., Appellant )

and )

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER (JERRY PETIS HOSPITAL),  
Loma Linda, CA, Employer**

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**Docket No. 09-666  
Issued: November 20, 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  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 8, 2009 appellant filed a timely appeal of the Office of Workers' Compensation Programs' April 7 and December 8, 2008 merit decisions, denying her recurrence of disability 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 has established that she sustained a recurrence of disability commencing May 27, 2007 causally related to her August 28, 2002 injury.

## **FACTUAL HISTORY**

On August 28, 2002 appellant, then a 43-year-old pharmacy technician, sustained a meniscus tear of the left knee when she tripped on a mat at work.<sup>1</sup> By letter dated February 25, 2003, the Office accepted her claim for a left knee meniscal tear.<sup>2</sup>

On July 12, 2007 appellant filed a claim alleging that she sustained a recurrence of disability on May 27, 2007. When she bent over to pick up her car keys from the kitchen floor, she heard a pop in the meniscus area of her left knee. Appellant stated that her knee never healed properly following surgery in 2003 and that she experienced ongoing pain and swelling.<sup>3</sup>

In a July 12, 2007 narrative statement, appellant related that a magnetic resonance imaging scan of her left knee revealed a meniscus tear stemming from her employment-related injury. She also sustained a broken tibia bone due to the way she was forced to walk. An attending physician advised her that the fracture could have been caused by her weak meniscus, which never healed properly.

In an August 23, 2007 medical report, Dr. Murphy reviewed the history that appellant sustained a left knee injury on May 27, 2007 when she picked up her keys. He also reviewed her medical background. Appellant's complaints included persistent medial left knee pain since her August 28, 2002 employment injury. On physical examination, Dr. Murphy reported decreased range of motion of the left knee, tenderness at the proximal tibia and mild swelling in the medial region. An x-ray of the left knee demonstrated a proximal tibia stress fracture medially. Dr. Murphy diagnosed an industrial musculoligamentous sprain/strain and a nonindustrial proximal tibial stress fracture of the left knee. He stated that the stress fracture may have developed as a result of some type of metabolic condition. Dr. Murphy opined that appellant sustained a nonindustrial injury on May 27, 2007.

By letter dated September 26, 2007, the Office requested that appellant submit a rationalized medical opinion from a physician explaining whether the diagnosed left knee strain was industrial or caused by the nonindustrial stress fracture or from picking up her keys. Appellant was provided 30 days to submit the requested evidence. She did not respond.

In a November 29, 2007 decision, the Office denied appellant's recurrence of disability claim. The medical evidence of record was found insufficient to establish that she was totally disabled on May 27, 2007 due to her accepted August 28, 2002 employment-related injury.<sup>4</sup>

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<sup>1</sup> Appellant retired from the employing establishment on medical disability in 2005.

<sup>2</sup> By decision dated May 19, 2006, the Office granted appellant a schedule award for a six percent impairment of the left lower extremity.

<sup>3</sup> By letter dated June 18, 2003, the Office authorized left knee arthroscopic surgery, which was performed by Dr. Paul C. Murphy, an attending Board-certified orthopedic surgeon, on July 3, 2003.

<sup>4</sup> In a January 14, 2008 letter, the Office denied authorization of appellant's request for left knee surgery based on its November 29, 2007 decision. It advised her to exercise her appeal rights if she disagreed with the denial of her recurrence of total disability claim.

In reports dated November 21, 2007 and January 4, 2008, Dr. Murphy provided findings on physical examination, which included joint line tenderness, positive McMurray's testing and internal derangement. He advised that appellant sustained a medial meniscus tear of the left knee, which had worsened.

By letter dated January 25, 2008, appellant requested reconsideration of the November 29, 2007 decision. She contended that there was confusion regarding Dr. Murphy's opinion on causal relation. Appellant asserted that he had informed her that the injury she sustained on May 27, 2007 was a recurrence of her August 28, 2002 employment injury. Dr. Murphy further advised her that the healing process from the original surgery did not work. Additional surgery was necessary because appellant continued to experience pain and swelling and was restricted regarding her left knee.

In an April 7, 2008 decision, the Office denied modification of the November 29, 2007 decision. The evidence submitted by appellant was insufficient to establish that she sustained a recurrence of disability commencing May 27, 2007 due to her accepted employment injury.

On April 28, 2008 appellant requested reconsideration. In an undated letter, she described her left knee symptoms which included swelling, weakness and "pain-catching-popping." Appellant was unable to bear weight since the August 28, 2002 employment-related injury and July 3, 2003 surgery. She stated that Dr. Murphy planned to submit a report clarifying his opinion.

By decision dated July 23, 2008, the Office denied appellant's request for reconsideration. It found that she failed to submit any relevant and pertinent new evidence or argument or establish that the Office erred in applying or interpreting a point of law. Appellant's claim was not entitled to further merit review.

On September 10, 2008 appellant requested reconsideration of the July 23, 2008 decision. In a June 27, 2008 report, Dr. Murphy reviewed the history of the accepted August 28, 2002 employment injury, the May 27, 2007 incident and appellant's medical treatment. He opined that her current strain and medial meniscus tear of the left knee were caused by the August 28, 2002 employment injury. Dr. Murphy stated that the employment injury continued to be the predominate and sole cause of appellant's ongoing knee condition and need for treatment. The other cause of appellant's knee pain was osteoporosis, which lead to the tibial stress fracture. Dr. Murphy related that the stress fracture had healed and was no longer related to her complaints of knee pain. He advised that the nonindustrial left tibial stress fracture would not have caused the medial meniscus tear.

By decision dated December 8, 2008, the Office denied modification of July 23, 2008 decision. The medical evidence submitted by appellant was found insufficient to establish that she sustained a recurrence of disability on May 27, 2007 causally related to her August 28, 2002 employment injury.

## LEGAL PRECEDENT

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment, which caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>5</sup>

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which she claims compensation is causally related to the accepted employment injury.<sup>6</sup> Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her recurrence of disability and her employment injury.<sup>7</sup> This burden includes the necessity of furnishing evidence from a qualified 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.<sup>8</sup> Moreover, the physician's conclusion must be supported by sound medical reasoning.<sup>9</sup>

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>10</sup> In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.<sup>11</sup> While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>12</sup>

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<sup>5</sup> 20 C.F.R. § 10.5(x).

<sup>6</sup> *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

<sup>7</sup> *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

<sup>8</sup> *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

<sup>9</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

<sup>10</sup> *See Ricky S. Storms*, *supra* note 8; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

<sup>11</sup> For the importance of bridging information in establishing a claim for a recurrence of disability, *see Richard McBride*, 37 ECAB 748 at 753 (1986).

<sup>12</sup> *See Ricky S. Storms*, *supra* note 8; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

## ANALYSIS

The Office accepted that appellant sustained a meniscal tear of the left knee on August 28, 2002 while in the performance of duty. Appellant underwent arthroscopic surgery on July 3, 2002. She claimed a recurrence of disability commencing May 27, 2007. The Board finds that appellant has failed to submit sufficient medical evidence to establish that her claimed recurrence was caused or aggravated by her accepted injury.

Dr. Murphy's August 23, 2007 report reviewed the history of the May 27, 2007 incident of lifting keys from her kitchen floor. He provided findings on physical examination. Dr. Murphy noted that appellant experienced persistent medial left knee pain since her August 28, 2002 employment injury. He found decreased range of motion of the left knee, tenderness at the proximal tibia and mild swelling in the medial region. Dr. Murphy noted that an x-ray of the left knee showed a proximal tibia stress fracture medially. After reporting the results of his examination and diagnostic testing, he opined that appellant sustained a work-related musculoligamentous sprain/strain. Dr. Murphy advised that she sustained a nonwork-related proximal tibial stress fracture on May 27, 2007. He stated that the stress fracture may have developed as a result of some type of metabolic condition. While Dr. Murphy opined that appellant's musculoligamentous sprain/strain was work related, he failed to provide any medical opinion relating her left knee condition to the August 28, 2002 employment injury.<sup>13</sup> Further, he did not provide any opinion addressing disability commencing May 27, 2007. The Board finds that Dr. Murphy's report is insufficient to establish her claim.

Dr. Murphy's November 29, 2007 and January 4, 2008 reports found that appellant sustained a worsening medial meniscus tear of the left knee. On physical examination, he reported joint line tenderness, positive McMurray's testing and internal derangement. However, Dr. Murphy did not address whether appellant's accepted left knee condition had changed such that she became disabled as of May 27, 2007.<sup>14</sup> The Board finds that his report is insufficient to establish appellant's claim.

Dr. Murphy's June 27, 2008 report reviewed a history of the August 28, 2002 employment injury, the May 27, 2007 key incident and appellant's medical treatment. He opined that her current left knee strain and medial meniscus tear required arthroscopic surgery and was the direct result of the August 28, 2002 employment injury. Dr. Murphy noted that the nonwork-related stress fracture was not related to appellant's complaints of knee pain. Instead, the condition was caused by osteoporosis and it had healed. Dr. Murphy advised that the stress fracture would not have caused appellant's medial meniscus tear. Although he stated generally that the diagnosed knee conditions were causally related to her accepted employment injury, he did not provide sufficient rationale explaining how appellant's disability commencing May 27, 2007 was related to the 2002 injury. The Board finds that his report is insufficient to establish appellant's claim.

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<sup>13</sup> *Richard A. Neidert*, 57 ECAB 474 (2006); *Alice J. Tysinger*, 51 ECAB 638 (2000) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>14</sup> *Id.*

Appellant has failed to submit rationalized medical evidence establishing that her alleged recurrence of disability commencing May 27, 2007 resulted from the residuals of her accepted left knee meniscus tear.<sup>15</sup> She has not met her burden of proof.<sup>16</sup>

**CONCLUSION**

The Board finds that appellant has failed to establish that she sustained a recurrence of total disability commencing May 27, 2007 causally related to her accepted August 28, 2002 employment-related injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 8 and April 7, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 20, 2009  
Washington, DC

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

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

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

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<sup>15</sup> *Cecelia M. Corley*, 56 ECAB 662 (2005).

<sup>16</sup> *Tammy L. Medley*, 55 ECAB 182 (2003).