

the form that the Office had accepted a similar condition in her right knee, which entailed the same kind of work-related swelling, pain and inflammation she was currently experiencing in her left knee. In a January 10, 2008 statement, received by the Office on January 15, 2008, appellant asserted that she began experiencing pain in her left knee approximately on December 12, 2007. She stated that she felt sudden pain while sitting down which continued when she tried to stand up. Appellant related that she eventually became unable to stretch her left leg and could not walk normally. She stated that she began limping and heard a popping sound in her left knee. Appellant sought medical treatment from Dr. Johnny Cheng, an orthopedic surgeon, on January 8, 2008.

The employing establishment controverted the claim. In a January 11, 2008 statement, appellant's supervisor, Luis Paguirigan, stated:

"On January 10, 2008 at approximately 11:30 a.m., [appellant] handed me medical documentation of an injury that took place back in December 2007. She requested a CA-2 form when she turned in her medical. [Appellant] told me that her doctor would not treat her unless authorized by her employer, he advised her to file a claim.

"[Appellant] made no mention of any accident that took place except for January 10, 2008. I asked her why she did n[ot] report it or say anything and she responded. 'Didn't you see me limping around, you knew about me going to the doctor about it, so you knew!' I personally recall back in December, [appellant] stated to me that she woke up with her knee hurting and that she could barely walk around, but she made no mention of it being work related.

"[Appellant] has been in a limited[-]duty status from a right shoulder, rotator cuff claim October 7, 2000. She is still working limited[-]duty sitting. [Appellant] is considered a permanent and stationary employee. Her limited[-]duty job offer has her working sitting down. I therefore do not understand how this knee injury is work related when [appellant] sits during work."

By letter dated January 28, 2008, the Office requested additional information. It requested evidence indicating that appellant sustained her alleged injury on the date in question. The Office asked her to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition, and an opinion as to whether her claimed condition was causally related to her federal employment.

In a report dated a January 8, 2008, received by the Office on February 6, 2008, Dr. Cheng advised that he had previously treated appellant for a meniscus tear in her right knee. He related that she had been experiencing increasing pain, clicking and popping in her left knee for the past month. Dr. Cheng opined that appellant had compensatory pain in her left knee, a possible meniscal injury, which developed due to her right knee medial meniscus tear. He recommended that appellant maintain her current work status, with no standing, no kneeling and no squatting. Dr. Cheng also recommended that she undergo a magnetic resonance imaging (MRI) scan to rule out a possible meniscal tear.

By decision dated April 8, 2008, the Office denied appellant's claim, finding that she failed to establish fact of injury. It stated that the factual and medical evidence she submitted did not establish that she sustained a left knee injury on December 12, 2007, as she alleged. The Office noted that, although appellant stated that she felt pain in her left knee as a result of her usual job as a mail handler, she failed to describe the specific work duties which caused her claimed condition. It also stated that the report from Dr. Cheng did not provide a diagnosis regarding her claimed left knee condition. The Office therefore denied compensation.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained an 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 he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

In order to determine whether an employee actually sustained an injury in the performance of her duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered, in conjunction with one another.⁷

The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred. An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action. A consistent history of the injury, as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be

² 5 U.S.C. § 8101 *et seq.*

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(e).

⁷ *Caroline Thomas*, 51 ECAB 451 (2000).

evidence of the occurrence of the incident. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether she has established a *prima facie* case. The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantive evidence.⁸ An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁹ However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹⁰

ANALYSIS

In the present case, the Office found that the record contained conflicting and inconsistent evidence regarding whether the claimed event occurred at the time, place and in the manner alleged. It noted that, although appellant stated on her Form CA-2 and in her January 10, 2008 statement that she injured her left knee while sitting down on December 12, 2007 and by overcompensating for her injured right knee, she failed to provide a specific description of the work duties which allegedly resulted in this condition. The Office concluded that appellant did not establish that she sustained the injury in the performance of duty on December 12, 2007. The Board finds, however, that appellant presented sufficient evidence to establish that the factors of employment occurred at the time, place and in the manner alleged.¹¹ The Board notes that appellant's supervisor, Mr. Paguirigan, did not consider her injury work related because she made no mention of any accident which allegedly occurred in December 2007 until January 10, 2008. He asserted that the only mention appellant made of a left knee injury in December 2007 was that she woke up with her knee hurting and could barely walk; she did not indicate that this was work related. Mr. Paguirigan also expressed skepticism regarding the work relatedness of appellant's left knee injury because she had been limited to sedentary employment since 2000 due to a right rotator cuff injury claim.

As stated above, however, the Board has held that an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹² Although no one witnessed the incident, and although Mr. Paguirigan did not believe appellant's account of how the injury occurred, appellant's statement that she experienced pain on December 12, 2007 while sitting down and attempting to get up and walk was not contradicted by any documentary evidence in the record. In addition, appellant sought medical attention on January 8, 2008, within a month after the date that she allegedly sustained a left knee injury causally related to her employment. Dr. Cheng stated in his

⁸ *Supra* note 5.

⁹ *Louise F. Garrett*, 47 ECAB 639, 643-44 (1996).

¹⁰ *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

¹¹ *Id.*

¹² *Supra* note 10.

January 8, 2008 report that appellant developed a left knee condition as of December 2007 caused by compensating for her previously accepted right knee condition.

The Board finds that the totality of this evidence, which includes appellant's January 10, 2008 statement and a report indicating that appellant was examined and treated for left knee pain on January 8, 2008, approximately one month after she allegedly experienced significant left knee pain at work, is sufficient to establish the alleged factors of employment. The employing establishment controverted the claim and contended that she did not experience the incident as alleged on the date in question. However, the record contains no contemporaneous factual evidence indicating that the claimed December 12, 2007 work incident did not occur as alleged.¹³ Under the circumstances of this case, therefore, the Board finds that appellant's allegations have not been refuted by sufficiently strong or persuasive evidence.

The Board finds, however, that appellant failed to submit rationalized medical opinion evidence to sufficiently describe or explain the medical process by which the claimed December 12, 2007 work incident, or compensation for her right knee injury, would have been competent to cause the claimed injury. In this regard, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹⁴

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.¹⁵ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

Dr. Cheng noted in his January 8, 2008 report that appellant had been experiencing increasing pain, clicking and popping in her left knee for the past month. He advised that she should continue on light, sedentary duty and maintain her current work restrictions; he also recommended that she undergo an MRI scan to determine whether she had a left-sided meniscal tear. Dr. Cheng opined that appellant likely developed a left knee condition while compensating for her right knee, a condition previously accepted by the Office. However, this statement is not probative with regard to causal relationship because it is vague and lacking rationale. In addition, Dr. Cheng failed to present a diagnosis of appellant's condition causally related to the December 12, 2007 employment injury. There is no indication in the record, therefore, that appellant's claimed left knee condition was work related. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of a physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹⁶ Appellant failed to provide a rationalized, probative medical opinion relating her

¹³ See *Thelma Rogers*, 42 ECAB 866 (1991).

¹⁴ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹⁵ *Id.*

¹⁶ See *Anna C. Leanza*, 48 ECAB 115 (1996).

current condition to any factors of her employment. Therefore, she failed to provide a medical report from a physician that the work incident of December 12, 2007 caused or contributed to the claimed left knee injury.

The Office advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Appellant, therefore, did not provide a medical opinion to sufficiently describe or explain the medical process through which the December 12, 2007 work incident would have caused the claimed injury. Accordingly, as she has failed to submit any probative medical evidence establishing that she sustained a left knee injury in the performance of duty, the Office properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that the Office properly found that appellant failed to meet her burden of proof to establish that she sustained a left knee injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2008 decision of the Office of Workers' Compensation Programs be affirmed, as modified.

Issued: November 18, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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