

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

J.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Brooklyn, NY, Employer**

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**Docket No. 09-1370
Issued: January 14, 2010**

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 May 5, 2009 appellant filed a timely appeal from the September 3, 2008 and April 3, 2009 merit decisions of the Office of Workers' Compensation Programs that denied her 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 established that she sustained an injury in the performance of duty causally related to her employment on July 24, 2008.

FACTUAL HISTORY

On July 25, 2008 appellant, a 48-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on July 24, 2008, as she walked through the gate at the employing establishment, she twisted her knee.

By report dated July 24, 2008, Dr. Mohammad Akhtar, an internist, reported findings on examination and diagnosed left knee derangement and contusion. On July 28, 2008 he released

appellant to light duty with restrictions limiting activities requiring bending, stretching, kneeling, squatting, pushing, pulling and reaching as well as operating a motor vehicle.

On July 29, 2008 Dr. Irene Boginsky, an orthopedist, diagnosed left knee sprain, bilateral hip pain and lower back pain. She reported that a magnetic resonance imaging (MRI) scan revealed a disc bulge at C4-5 and a right knee condition.

On August 5, 2008 Dr. Harold Tice, a Board-certified radiologist, reported that MRI scans of appellant's left knee revealed degenerative changes in all compartments, an absence of normal medial meniscal tissue, joint effusion, Baker's cyst and loose body formation within the intercondylar fossa region.

On August 12, 18 and 29, 2008 Dr. Boginsky diagnosed several conditions including left hip muscle strain, left knee sprain and left knee derangement. She noted that appellant told her that, "while walking ... she slipped on wet pavement and twisted left knee."

On August 18, 2008 Dr. Apostolos P. Tambakis, a Board-certified orthopedic surgeon, diagnosed left knee derangement. He opined that appellant was unable to work for four weeks.

By report dated September 2, 2008, Dr. Tambakis reported findings on examination, reviewed appellant's history of injury and diagnosed left knee derangement. He related that appellant was walking on July 24, 2008 when she twisted her left knee. Dr. Tambakis noted that appellant had undergone surgery on the knee some 20 years prior, after an automobile accident. He also noted that she had reinjured her left knee four years prior. Dr. Tambakis concluded that appellant "has a marked disability causally related to the accident aggravating preexisting condition."

By decision dated September 3, 2008, the Office denied the claim because the evidence of record did not establish factual basis of her claim.

On September 9, 2008 Dr. Pierce J. Ferriter, a Board-certified orthopedic surgeon, reported findings on examination, reviewed appellant's history of injury, and diagnosed degenerative left knee osteoarthritis with tearing of the menisci and anterior ligament. He reported that she attributed her injury to a July 24, 2008 incident when, while walking through a parking lot in the rain, she twisted her knee. Dr. Ferriter noted that appellant's past history was significant for knee surgery in 1975, after an automobile accident. He concluded that her diagnosed degenerative arthritis of the left knee was not causally related to the July 24, 2008 incident. Dr. Ferriter explained that appellant's condition was preexisting and may require a total knee replacement.

On September 17, 2008 appellant, through her attorney, requested an oral hearing.

On November 21, 2008 Dr. Tambakis diagnosed arthritis.

On December 9, 2008 Dr. Rolando Singson, a Board-certified radiologist, reported findings following x-rays of appellant's left side. He diagnosed severe left knee medial compartment osteoarthritis.

By report dated January 14, 2009, Dr. Steven F. Harwin, a Board-certified orthopedic surgeon, reported findings on examination, reviewed appellant's medical history and diagnosed severe degenerative left knee arthritis, status post open surgery in the past.

At a hearing conducted on January 15, 2009, appellant testified that it was raining hard the day she twisted her knee. She testified that prior to July 24, 2008 she had no knee problems. Appellant also testified that 15 or 20 years ago she injured her knee in a car accident. She testified that she twisted her knee, it gave out and "swelled up very badly."

By decision dated April 3, 2009, the Office denied the claim. While it accepted that the employment incident occurred as alleged, it denied the claim because the medical evidence of record did not establish that the accepted employment incident caused a medically-diagnosed condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of her claim by the weight of the evidence,² including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.³ As part of her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁴ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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.⁶ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

³ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *G.T., id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁵ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁶ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

ANALYSIS

The Office accepted that the identified employment incident occurred as alleged. Appellant's burden is to establish that this incident caused a medically-diagnosed injury. Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion that explains the causal relationship between the employee's diagnosed condition and the accepted employment incident. The Board finds that appellant has not submitted sufficient medical evidence to establish that her current condition was caused by the July 2008 employment incident and therefore has not established she sustained an injury in the performance of duty on July 24, 2008.

Appellant submitted reports from Drs. Akhtar, Boginsky, Ferriter, Harwin, Singson, Tambakis and Tice, but these reports have little probative medical value on the issue of causal relationship because they lack an opinion explaining how the accepted employment incident caused the conditions diagnosed.⁷ This deficiency reduces the probative value of these reports such that they are insufficient to satisfy appellant's burden of proof.

Drs. Tambakis and Ferriter were the only physicians of record who attempted to address the issue of causal relationship. Each of these physicians noted appellant's preexisting left knee conditions. Under the Act, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.⁸ When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.⁹ While Dr. Tambakis opined that appellant had left knee derangement and that the July 2008 incident aggravated the preexisting condition, he offered no medical rationale to explain the basis of his opinion. He did not explain how physiologically a twisting of the knee in July 2008 would have aggravated the preexisting derangement of the knee. Dr. Ferriter also noted appellant's preexisting left knee condition, which he diagnosed as degenerative arthritis of the left knee. He concluded that appellant's current condition was preexisting and was not causally related to the July 2008 incident.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.

The Board finds appellant has not satisfied her burden of proof to establish she sustained an injury in the performance of duty causally related to her employment on July 24, 2008.

⁷ See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). See also *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁸ *Raymond W. Behrens*, 50 ECAB 221, 222 (1999); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁹ *Id.*

CONCLUSION

The Board finds that appellant has not established she sustained an injury in the performance of duty causally related to her employment on July 24, 2008.

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2009 and September 3, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 14, 2010
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