

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

D.C., Appellant)

and)

**DEPARTMENT OF LABOR, OCCUPATIONAL
SAFETY & HEALTH ADMINISTRATION,
Braintree, MA, Employer**)

**Docket No. 10-567
Issued: November 10, 2010**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 28, 2009 appellant filed a timely appeal from October 1 and November 20, 2009 merit decisions of the Office of Workers' Compensation Programs denying her traumatic-injury 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 sustained an injury to her knees on April 3, 2008 in the performance of duty.

FACTUAL HISTORY

On April 16, 2008 appellant, then a 51-year-old program assistant, filed a claim alleging that on April 3, 2008 she injured her right and left knees when she knelt down looking "for the outlets for the cables in the cage that is on the floor...."

On April 23, 2008 the employing establishment controverted the claim based on willful misconduct. It described appellant's history of prior work-related injuries to her knees and indicated that she had received oral and written instructions not to kneel, squat or bend.

In a progress report dated April 17, 2008, Dr. Joseph A. Ingelfinger, a Board-certified internist, examined appellant "because her knees are hurting again especially her left knee. At work she had to kneel down to reattach some wiring on their computer system and standing up she had substantially increased pain...." He diagnosed a possible aggravation of osteoarthritis or bursitis and found that she should remain off work one week. In a (Form CA-16) dated April 17, 2008, Dr. Ingelfinger diagnosed internal derangement of the knee and checked "yes" that the condition was caused or aggravated by employment. The form provided the history of injury as appellant experiencing knee pain due to kneeling to install equipment into a floor level cabinet.

In a form report dated June 3, 2008, Dr. Arun J. Ramappa, a Board-certified orthopedic surgeon, provided a history of injury as appellant experiencing pain after kneeling at work to reattach wiring. He diagnosed an exacerbation of arthritis as seen by x-ray and checked "yes" that the condition was caused by an employment activity.¹ Dr. Ramappa explained that kneeling "aggravated her arthritis caused increased pain." He found that appellant could work limited duty.

In a form report dated May 1, 2008, Dr. Ingelfinger checked "yes" that the condition was caused or aggravated by an employment injury and opined that appellant was totally disabled from April 17 to 27, 2008 and partially disabled beginning April 28, 2008. For the diagnosis he indicated "see attached."²

By decision dated June 19, 2008, the Office denied appellant's claim on the grounds that she did not establish an injury as alleged. It found that she had experienced the April 3, 2008 employment incident, but that the medical evidence was insufficient to show that she sustained an injury as a result of kneeling on April 3, 2008.

In a letter dated June 19, 2008, the Office notified the employing establishment that it had not established willful misconduct as the evidence did not show that "she has deliberately violated a known regulation, safety rule or prohibited activity" or "intentionally injured herself."

In a form report dated June 17, 2008, received by the Office on June 24, 2008, Dr. Robert G. Davis, a Board-certified orthopedic surgeon, diagnosed post-traumatic osteoarthritis after appellant injured her left knee on the floor. He checked "yes" that her bilateral knee condition was caused or aggravated by an employment activity. Dr. Davis recommended left knee surgery and a magnetic resonance imaging (MRI) scan study on the right knee. He found that appellant was partially disabled.

On June 3, 2008 Dr. Albert Lin discussed appellant's history of a partial medial and lateral meniscectomy on May 3, 2007 and noted that she complained of left knee pain occurring

¹ An x-ray obtained on June 3, 2008 revealed a slight worsening of osteophytosis as compared to a 2007 study.

² There was no medical evidence attached to the May 1, 2008 form report.

after a fall in April 2008. He diagnosed a progression of left knee “tricompartamental osteoarthritis with severe arthritis in the medial compartment.” Dr. Lin recommended a total knee replacement.

On June 22, 2008 Dr. Davis noted that appellant was doing well after a 2007 left knee arthroscopy until April 3, 2008, when she injured her knee at work. He stated, “She was kneeling [and] she heard a ‘clunk.’ She has had significant discomfort and pain since.” Dr. Davis listed findings on examination and diagnosed “work-related degenerative changes in her left knee.” He also indicated that appellant’s “right knee began hurting subsequent to the causally linked to this accident” on April 3, 2008. Dr. Davis recommended a left total knee replacement and right knee MRI scan study.

In a July 9, 2008 progress report, Dr. Davis diagnosed left knee degenerative joint disease and a medial and lateral right knee tear. He noted that appellant sustained a work injury on April 3, 2008. Dr. Davis stated, “My impression is that she has symptomatic meniscal tears. I do think that these are related to and/or exacerbated by her injury. She needs a knee replacement on the left and an arthroscopy medial and lateral meniscal tear on the right.” In another form report of the same date, Dr. Davis described the injury as occurring when appellant was kneeling and heard a “clunk.” He diagnosed left knee post-traumatic degenerative disease and a right knee medial meniscus tear. Dr. Davis checked “yes” that the condition was caused by the employing activity as she was “kneeling at work.” On July 9, 2008 he noted that a June 23, 2008 MRI scan study of the right knee showed a lateral meniscal tear, moderate articular cartilage damage and a small effusion.

On July 17, 2008 appellant requested reconsideration. By decision dated September 16, 2008, the Office denied modification of its June 19, 2008 decision.

In a narrative report dated July 17, 2008, received by the Office on October 6, 2008, Dr. Davis diagnosed appellant hearing a “clunk” while kneeling at work on April 3, 2008. He diagnosed “work-related degenerative changes in her left knee.”

In a report dated July 9, 2008, Dr. Ingelfinger noted that appellant had pain in both knees after kneeling at work and was scheduled for bilateral total knee replacements. On July 9, 2009 Dr. Davis diagnosed degenerative joint disease of the left knee and a medial and lateral meniscal tear of the right knee. He attributed the meniscal tears to her injury at work.

Appellant underwent a total left knee replacement on August 25, 2008. On November 20, 2008 she requested reconsideration.

On December 16, 2008 Dr. Davis related that appellant’s knees were asymptomatic until a work incident on April 3, 2008. He noted that a June 2008 MRI scan study showed a right meniscal tear. Dr. Davis recommended a right knee arthroscopy and related, “I do feel that this is work related that is her meniscal tear....”

By decision dated February 23, 2009, the Office denied modification of its September 16, 2008 decision.

In a February 13, 2009 addendum to his April 17, 2008 report, Dr. Ingelfinger indicated that appellant was trying to fix something on the floor and “while in that position or while trying to get up experienced sudden knee pain.” He asserted that it was not relevant what position she was in but related, “It was and is clear to me that [she] was doing something at work which precipitated sudden knee pain.”

On April 23, 2009 appellant underwent a medial meniscectomy and synovectomy with plica resection on the right knee. On May 29, 2009 Dr. Ingelfinger related that he had treated her for 15 years. He stated, “For the past several years she has suffered with severe progressive knee pain from osteoarthritis and now she walks in pain with a cane.” Dr. Ingelfinger found that appellant could only walk when “absolutely necessary.”

On August 4, 2009 appellant requested reconsideration. Her attorney argued that she was not kneeling on April 3, 2008 but instead fell onto her knees after she bent down onto the balls of her feet. Appellant’s attorney contended that the medical evidence established that appellant’s knee conditions, total left knee replacement and disability were due to her April 3, 2008 fall.³

By decision dated October 1, 2009, the Office denied modification of its prior decision.

On October 7, 2009 appellant requested reconsideration. In a report dated September 23, 2009, Dr. Davis stated:

“[Appellant] was initially injured 1995, work related and then reinjured [April 23, 2008]. I have been following her for this. She has had significant discomfort and pain, which has progressed with respect to that right knee since her accident [April 24, 2008]. Indeed, on [April 23, 2009], she had arthroscopy of her right knee medial meniscectomy and synovectomy as a result of that fall. That is to say she tore her meniscus. It is also clear that since that injury, her arthritis has progressed in her right knee and now radiographs demonstrate advancing and advanced [osteoarthritis] tricompartmental with bone-on-bone articulation in the medial compartment.⁴

“[Appellant] has significant discomfort and pain with her knee that is not improving. She needs a total knee replacement. It is certainly my opinion, that this right knee present condition is causally linked to her fall on [April 3, 2008] and therefore falls under [state workers’ compensation] in that this fall is a major contributor to her current medical problem and disability with respect to her right knee.

“Appellant did have some preexisting conditions in her right knee prior to [April 3, 2008], but once again, this fall is a major contribution to her current

³ On August 25, 2008 the employing establishment noted that appellant provided a varying history of injury to her physicians.

⁴ On October 21, 2008 Dr. Davis noted that appellant experienced a work injury on April 3, 2008 and that diagnostic studies showed a meniscal tear. He recommended a right knee arthoscopic debridement.

advancing osteoarthritis and medical condition that necessitates her total knee replacement.”

By decision dated November 20, 2009, the Office denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act⁵ 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 filed within the applicable time limitation, that an injury was sustained while 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.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

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.⁸ 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.⁹ 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.¹⁰

ANALYSIS

Appellant alleged that she sustained an injury to both knees on April 3, 2008 when she knelt on the floor to look for cable outlets near her workstation. The Office accepted that the incident occurred at the time, place and in the manner alleged, that she knelt on the floor on April 3, 2008 to find an outlet. Subsequently appellant alleged that she fell onto her knees from the balls of her feet while bending over. Her initial statement and the contemporaneous medical evidence, however, provide a consistent history of her kneeling on April 3, 2008 to find an outlet. The Board finds that appellant has not established that she fell onto her knees, but instead that she knelt on her knees on April 3, 2008 looking for an outlet. The issue is whether the

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Alan V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁷ *See Ellen L. Noble*, 55 ECAB 530 (2004).

⁸ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁹ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹⁰ *Id.*

medical evidence establishes that she sustained an injury as a result of kneeling on the floor while searching for a cable outlet.

The Board finds that appellant has not established that the April 3, 2008 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.¹¹

On April 17, 2008 Dr. Ingelfinger examined appellant for bilateral knee pain that began when she knelt down at work to attach some wiring. When she stood up she experienced knee pain, worse on the left side. Dr. Ingelfinger diagnosed a possible aggravation of osteoarthritis or bursitis and opined that she should stay off work one week. He did not, however, render a firm diagnosis or specially relate the diagnosed condition to the described work activity.¹² In an authorization for examination and/or treatment (Form CA-16) of the same date, Dr. Ingelfinger diagnosed internal derangement of the knee and checked “yes” that the condition was caused or aggravated by employment.¹³ In a form report dated May 1, 2008, he checked “yes” that the condition was caused or aggravated by employment and found that appellant was disabled from work April 17 to 27, 2008 and partially disabled beginning April 28, 2008. The Board has held, however, that when a physician’s opinion on causal relationship consists only of checking “yes” to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.¹⁴

In a February 13, 2009 addendum to his April 17, 2008 report, Dr. Ingelfinger described the injury as occurring when appellant tried to get up after attempting to fix something on the floor. He stated that, regardless of her position, it was clear that she “was doing something at work which precipitated sudden knee pain.” To be of probative value, however, a physician must provide a narrative description of the employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant’s diagnosed medical condition.¹⁵ Dr. Ingelfinger did not clearly describe the circumstances of the injury or provide any rationale for his opinion; consequently, it is insufficient to meet appellant’s burden of proof.

On May 29, 2009 Dr. Ingelfinger provided appellant’s history of progressive and severe knee pain due to osteoarthritis over the past several years and opined that she could walk only when essential. He did not, however, address causation. The Board has held that medical

¹¹ *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

¹² Medical opinion evidence must be 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. *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

¹³ The Board notes that the Office issued a Form CA-16. A properly executed Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. See *Elaine M. Kreymborg*, 41 ECAB 256, 259 (1989). The Office did not address this issue in its October 1 or November 20, 2009 decisions.

¹⁴ *Deborah L. Beatty*, 54 ECAB 752 (2003).

¹⁵ *John W. Montoya*, 54 ECAB 306 (2003).

evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹⁶

In a form report dated June 3, 2008, Dr. Ramappa listed the history of injury as appellant having knee pain after kneeling at work. He diagnosed an exacerbation of arthritis and checked "yes" that the condition resulted from employment, providing as a reason that the kneeling caused increased pain. A medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.¹⁷

On June 3, 2008 Dr. Lin reviewed appellant's history of a partial medial and lateral meniscectomy in May 2007. He diagnosed a progression of osteoarthritis and noted that she experienced knee pain after an April 2008 fall. Dr. Lin recommended a total knee replacement. He did not, however, directly address the cause of appellant's worsening osteoarthritis and his report is of diminished probative value.¹⁸ Further, Dr. Lin relied upon a history of injury not accepted by the Office, that appellant falling on April 3, 2008. Consequently, his report is of diminished probative value.¹⁹

On June 22, 2008 Dr. Davis noted that appellant was doing well after her 2007 knee surgery until she heard a "clunk" while kneeling at work on April 3, 2008. He diagnosed degenerative changes due to her employment in the left knee and noted that she also experienced right knee pain after the April 3, 2008 incident. Dr. Davis recommended a left total knee replacement. He did not, however, explain how kneeling at work caused degenerative left knee changes or the need for a total knee replacement. A mere conclusion without the necessary rationale explaining how and why Dr. Davis believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet a claimant's burden of proof.²⁰ Such medical rationale is particularly necessary in view of appellant's long-standing, preexisting knee condition. Lacking adequate rationale, Dr. Davis' opinion on causal relation is of diminished probative value and insufficient to establish that appellant's work aggravated her preexisting bilateral knee condition or caused a new condition.

On July 9, 2008 Dr. Davis diagnosed a medial and lateral tear of the right knee due to her exacerbated by the April 3, 2008 employment incident. In an accompanying form report, he diagnosed left knee post-traumatic degenerative disease and a right knee meniscal tear. Dr. Davis listed the injury as occurring when appellant was kneeling and heard a "clunk." He checked "yes" that the condition was caused by employment as she was "kneeling at work." Dr. Davis, however, did not address, with reference to the specific facts of this case, how appellant's kneeling at work aggravated a preexisting degenerative condition of the left knee or

¹⁶ A.D., 58 ECAB 149 (2006); *Conrad Hightower*, 54 ECAB 796 (2003).

¹⁷ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

¹⁸ See *Conrad Hightower*, *supra* note 16.

¹⁹ M.W., 57 ECAB 710 (2006); *Joseph M. Popp*, 48 ECAB 624 (1997).

²⁰ See *Beverly A. Spencer*, 55 ECAB 501 (2004).

caused meniscal tears on the right side. He must provide an opinion on whether the employment incident described caused or contributed to claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rationale.²¹

In a report dated December 16, 2008, Dr. Davis noted that appellant's knees were not symptomatic until her April 3, 2008 work injury. He attributed her meniscal tear to the April 3, 2008 employment incident. On October 21, 2008 Dr. Davis reiterated that the diagnosed conditions resulted from the work incident. Again, however, as he did not provide any rationale for his opinion it is of diminished probative value.²²

In a report dated September 23, 2009, Dr. Davis discussed appellant's history of a 1995 employment injury. He asserted that she tore her meniscus on April 23, 2008 when she reinjured her knee. Dr. Davis also advised that she had a progression of right knee arthritis subsequent to her reinjury and required a total knee replacement. He noted that appellant had a preexisting right knee condition, but concluded that her fall on April 3, 2008 was "a major contributor to her current medical problem and disability with respect to her right knee." As previously discussed, however, medical conclusions unsupported by rationale are of diminished probative value.²³ Additionally, Dr. Davis relied upon a history of appellant experiencing a fall on April 3, 2008 rather than an injury after kneeling at work.

The Board finds that appellant failed to provide rationalized medical evidence establishing that her work activities of kneeling on April 3, 2008 caused a new injury or an aggravation of preexisting conditions. Therefore, she failed to meet her burden of proof.

CONCLUSION

The Board finds that appellant did not sustain an injury on April 3, 2008 in the performance of duty.

²¹ See *John W. Montoya*, *supra* note 15.

²² *T.F.*, 58 ECAB 128 (2006); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

²³ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 1 and November 20, 2009 are affirmed.

Issued: November 10, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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