

	)	
<b>G.H., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 10-1518</b>
	)	<b>Issued: February 16, 2011</b>
<b>DEPARTMENT OF THE ARMY, U.S. ARMY</b>	)	
<b>GARRISON, Fort George G. Meade, MD,</b>	)	
<b>Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

On March 17, 2010 appellant filed a timely appeal from the January 27, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

The issue is whether appellant's disability from August 2 to November 7, 2009 was causally related to her August 8, 2007 right knee injury.

On February 8, 1996 appellant, then a 39-year-old management analyst, filed a claim alleging that she injured her right knee (and back) in the performance of duty when she tripped

on a telephone cord and fell to the floor. The Office accepted her claim as an uncontroverted no-time-lost case.<sup>1</sup>

Appellant filed a recurrence claim alleging that on August 8, 2007 her right knee gave out en route to get a new civilian identification card for her work/computer. She stated that she fell pretty hard. The Office treated this as a new traumatic injury and accepted her claim for aggravation of osteoarthritis and degenerative joint disease, right knee.<sup>2</sup>

Appellant appears to have undergone a right medial unicondylar knee replacement on November 27, 2007. Radiographs on August 26, 2008 showed a well-placed Oxford unicompartmental knee replacement functioning normally, although the lateral compartment seemed to have rapidly progressed with arthritis.

Appellant's left knee had been giving her problems since at least 2003. X-rays on June 2, 2006 showed only a millimeter of joint space medially on the left.

On June 1, 2009 appellant underwent a total left knee arthroplasty. She saw her orthopedic surgeon, Dr. Nicholas P. Grosso, on August 27, 2009 for follow up. Appellant was progressing nicely with some lateral and medial pain. She was to continue working on her progress with the left knee over the next month and then follow up with reexamination. Appellant's right knee was also bothering her, but Dr. Grosso wanted to get her "over the hump" with her left knee before any further treatment, if necessary, on the right.

Appellant claimed compensation for wage loss from August 2 to November 7, 2009.

On January 20, 2010 Dr. Grosso attributed appellant's left knee condition in part to her inability to bear full weight on her right, which significantly impacted the left knee causing it to degenerate more quickly than it would have otherwise. He reiterated his opinion on February 25, 2010:

"[Appellant] had seen me with basically knee problems coming from a significant right knee problem after a unicompartmental knee arthroplasty. [She] was on assisted ambulation, putting all her weight on her left knee for many months. This in my opinion caused a left knee to degenerate quicker than it would have in other instance and ultimately required a total knee arthroplasty. [Appellant] was significantly disabled after the total knee arthroplasty during recovery.

"I do believe within a reasonable amount of medical certainty that the exacerbation of her left knee degenerative changes [was] significantly impacted by her inability to ambulate normally after her right knee surgery."

In a decision dated January 27, 2010, the Office denied appellant's claim for wage-loss compensation from August 2 to November 7, 2009. It noted that it appeared appellant was claiming compensation because of a total knee replacement on the left, which was not accepted

---

<sup>1</sup> OWCP File No. xxxxxx385 (master file).

<sup>2</sup> OWCP File No. xxxxxx837 (subsidiary file).

as employment related. The Office found that Dr. Grosso's rationale was insufficient to warrant expansion of appellant's claim to include her left knee condition or her June 1, 2009 left knee surgery.

On appeal, appellant reiterates Dr. Grosso's opinion. She explains that she is out of work indefinitely and that she is having trouble paying her mortgage and monthly bills. Appellant does not have the funds to pay her daughter's last year at Howard University. Creditors are contacting her family members trying to get in touch with her. Appellant explained that indebtedness problems could affect her security clearance. She noted that the Office approved compensation for the right knee but nothing for the left and though her right knee and a neck/back claim were approved, she has never received compensation.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of her duty.<sup>3</sup> "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.<sup>4</sup>

A claimant seeking benefits under the Act has the burden of proof to establish the essential elements of her claim by the weight of the evidence,<sup>5</sup> 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.<sup>6</sup>

It is not sufficient for the claimant to establish merely that she has disability for work. She must establish that her disability is causally related to the accepted employment injury. The claimant must submit a rationalized medical opinion that supports a causal connection between her current disabling condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the employment injury, and must explain from a medical perspective how the current disabling condition is related to the injury.<sup>7</sup>

### **ANALYSIS**

Appellant claims wage-loss compensation from August 2 to November 7, 2009. She therefore has the burden to establish that her disability during this period was causally related to her August 8, 2007 employment injury.

---

<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> 20 C.F.R. § 10.5(f).

<sup>5</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>6</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>7</sup> *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

Dr. Grosso, the orthopedic surgeon, offered an opinion supporting causal relationship. He believed to a reasonable medical certainty that appellant's inability to ambulate after her right knee unicompartmental knee arthroplasty caused her to put all her weight on her left knee for many months, which in turn caused her left knee to degenerate more quickly, ultimately requiring a total knee replacement. The claimed disability, Dr. Grosso indicated, was a result of her recovery from the left knee surgery.

Dr. Grosso thus constructed a rational theory that connects appellant's August 8, 2007 right knee injury, or at least her June 1, 2009 right knee arthroplasty, to her total left knee replacement on June 1, 2009 and subsequent disability. The problem with this theory is that he offered no factual basis for the supposed exacerbation. If placing more weight on the left knee caused appellant's left knee to degenerate more quickly, Dr. Grosso should be able to produce the clinical findings, imaging studies or other documentation demonstrating the accelerated rate of degeneration. Without that kind of objective proof, and without a sound explanation of how that evidence shows a degenerative process progressing faster than normal, his opinion amounts to little more than speculation on what might have happened.

Although the opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal.<sup>8</sup> Also, if Dr. Grosso were reasonably certain that the degenerative process he was witnessing on the left was accelerating after the partial right knee replacement, it is fair to ask whether he noted this at the time, and if not, why.

The medical opinion evidence draws a connection between appellant's right knee unicompartmental arthroplasty and her claimed disability from August 2 to November 7, 2009. That evidence it is not sufficiently rationalized to discharge appellant's burden to establish causal relationship. The Board will therefore affirm the Office's January 27, 2010 decision denying her disability claim.

Appellant argues on appeal that the Office has not paid compensation after accepting her right knee injury. It appears the only compensation she has claimed for this injury is compensation for wage loss from August 2 to November 7, 2009. The record shows that appellant filed a recurrence claim for her fall on August 8, 2007. She indicated on that form that she stopped work on August 8, 2007 and returned to work two days later. As the Office accepted this as a traumatic injury, it should determine whether appellant is entitled to continuation of pay or to any compensation for wage loss that week. It should also determine whether her November 2007 right knee surgery was authorized or causally related to the accepted right knee injury, and if so, whether she is entitled to compensation for any wage loss resulting from that surgery.

---

<sup>8</sup> *Philip J. Deroo*, 39 ECAB 1294 (1988); *Jennifer Beville*, 33 ECAB 1970 (1982) (statement of a Board-certified internist that the employee's complaints "could have been" related to her work injury was speculative and of limited probative value).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that her disability from August 2 to November 7, 2009 was causally related to her August 8, 2007 right knee injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 27, 2010 decision of the Office of Workers' Compensation Programs is affirmed. The case is remanded for further action consistent with this opinion.

Issued: February 16, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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