United States Department of Labor
Employees' Compensation Appeals Board

G.B., Appellant	)	
and	)	**Docket No. 12-1023**
	)	**Issued: November 16, 2012**
DEPARTMENT OF VETERANS AFFAIRS, NORTHERN ARIZONA VETERANS ADMINISTRATION HEALTH CARE SYSTEM, Prescott, AZ, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 16, 2012 appellant, through her representative, filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) merit decision dated February 21, 2012 denying her claim of compensation. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 met her burden of proof to establish that she sustained bilateral knee conditions causally related to factors of her federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 13, 2010 appellant, then a 51-year-old information technology specialist, filed an occupational disease claim, alleging that her job duties aggravated her bilateral knee condition. She explained that going up and down stairs on a daily basis over a period of years aggravated a right knee injury she sustained in 2006.

OWCP received a statement from appellant's supervisor who noted that the employing establishment was not equipped with elevators due to the age of the building. In a supplemental statement received by OWCP on September 9, 2010, appellant explained that on May 31, 2006 her right knee swelled after she walked to several different buildings, crawled under desks and walked up and down stairs, while performing an inventory. On May 4, 2010 her legs became swollen after she walked up and down stairs at work. Appellant stated that the lack of treatment of her knee condition in 2006, combined with years of ascending and descending stairs aggravated her condition.

On September 9, 2010 OWCP requested that appellant submit additional medical evidence in support of her claim. It asked for a medical report which provided a diagnosis of her condition and a physician's opinion as to how her employment activities caused, contributed to or aggravated her medical condition.

OWCP received June 12, 2006 x-ray reports from Dr. Robert H. Dorwart, a Board-certified diagnostic radiologist, who listed an impression of mild degenerative changes of the patellofemoral and medial compartment of the left knee. Dr. Dorwart also found minimal degenerative changes of the patellofemoral joint and mild degenerative narrowing of the medial compartment of the right knee.

An August 4, 2010 magnetic resonance imaging (MRI) scan of appellant's right knee by Dr. David Amstutz, a diagnostic radiologist, stated an impression of small tear of the anterior horn of the lateral meniscus. It also found an overlying chronic osteochondral defect within the lateral femoral condyle, probable inner margin fraying of the medial meniscus, small joint effusion with possible early synovitis, indistinct appearance of the anterior cruciate ligaments suggesting partial or chronic tear and Grade 1 sprain of the medial collateral ligament.

On November 10, 2010 OWCP denied appellant's occupational disease claim on the grounds that she did not submit sufficient medical evidence to establish that her right knee condition was related to the claimed work factors.

On November 23, 2010 appellant requested a hearing before the Branch of Hearings and Review. A hearing was held on June 1, 2011. Appellant testified that she sustained an injury in 2006 while performing inventory at work and frequently climbing stairs. She noted that she had completed an accident form with her employer. Appellant stated that she experienced swelling in her knees again in 2010 and she sought medical treatment.

By decision dated August 17, 2011, the hearing representative affirmed the denial of the claim. She found appellant had failed to submit adequate medical evidence to establish the causal relationship between her diagnosed right knee conditions and her claimed work factors.

Appellant requested reconsideration on November 28, 2011 and submitted a July 13, 2011 medical report signed by Dr. Paul Pflueger, a Board-certified orthopedic surgeon, who noted that appellant had a long history of problems with both knees dating back to 2006. Judging from the 2010 MRI scan, she appeared to have a medial meniscus tear in the right knee. Dr. Pflueger stated that "it is quite possible she has been walking around on a medial meniscus tear of the right knee and possibly a medial meniscus tear of the left knee since that time. This would certainly have made the tears worse over time."

By decision dated February 21, 2012, OWCP denied modification of the August 17, 2011 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA; 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.[2] 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.[3]

An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.[4] To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one 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.[5]

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[4] 20 C.F.R. § 10.5(q).

[5] *Solomon Polen*, 51 ECAB 341 (2000).

ANALYSIS

OWCP accepted that appellant's alleged work duties occurred as alleged as she walked up and down stairs at the employing establishment as the building was not equipped with an elevator. The Board finds, however, that she has not met her burden of proof to establish her employment duties caused her diagnosed bilateral knee conditions. Appellant claimed that her current work duties aggravated a preexisting knee condition from 2006.

Dr. Dorwart's June 12, 2006 x-ray reports noted mild degenerative changes of the patellofemoral and medial compartment of the left knee. There were also minimal degenerative changes of the patellofemoral joint and mild degenerative narrowing of the medial compartment of the right knee. The August 4, 2010 MRI scan report from Dr. Amstutz noted a small tear of the anterior horn of the lateral meniscus with overlying chronic osteochondral defect within the lateral femoral condyle, probable inner margin fraying of the medial meniscus, small joint effusion with possible early synovitis, indistinct appearance of the anterior cruciate ligaments suggesting partial or chronic tear, and Grade 1 sprain of the medial collateral ligament. The evidence suggests that appellant had degenerative bilateral knee conditions first diagnosed in 2006. The MRI scan regarding her right knee condition in 2010 noted a torn meniscus. Neither Dr. Dorwart, nor Dr. Amstutz, provided any opinion regarding the cause of appellant's diagnosed conditions.

Dr. Pflueger reported that appellant had a long history of problems with both knees dating back to 2006, when they were injured at work. He stated that it was quite possible that appellant had been walking around on a medial meniscus tear of her right knee and possibly of her left knee since that time. Dr. Pflueger's opinion is of diminished probative value as his opinion on causal relation is speculative. While he related generally that appellant had injured her knees at work in 2006, he did not describe the nature or extent of any such injury. Appellant noted that she had completed an accident form in 2006 but did not describe the nature of any medical treatment rendered. The Board notes that Dr. Pflueger speculated that appellant might have been walking around with a meniscus tear since 2006. He did not provide any medical evidence that appellant had sustained meniscal tears in 2006 or address the diagnostic tests obtained that year. Medical opinions that are speculative or equivocal in character are of diminished probative value.[6] While Dr. Pflueger stated a conclusion that walking would certainly have made the tears worse, he did not provide a rationalized medical opinion describing the physiologic process by which the walking appellant performed at work would have caused or aggravated her knee condition. As part of her burden, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.[7]

Appellant did not submit a rationalized medical opinion, based upon an accurate history of injury, explaining how her diagnosed knee conditions were causally related to walking at the employing establishment. She therefore has not met her burden of proof.

[6] *See D.D.*, 57 ECAB 734 (2006).

[7] *G.T.*, 59 ECAB 447 (2008); *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

CONCLUSION

The Board finds that appellant has not established that she sustained bilateral knee conditions causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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