

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY P. GONSA and DEPARTMENT OF LABOR, OFFICE OF SAFETY & HEALTH ADMINISTRATION, North Syracuse, N.Y.

*Docket No. 97-2310; Submitted on the Record;
Issued April 27, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof to establish that she sustained an injury on February 14, 1995 as alleged.

Appellant filed a claim for a traumatic injury occurring on February 14, 1995 when she slipped and fell on snow and ice, landing on both knees. Appellant's supervisor signed her claim form on May 5, 1995 and indicated that she had received verbal notification of the injury on February 14, 1995.

Appellant previously filed a claim for a traumatic injury to her lower back and neck on February 23, 1994 when she slipped and fell on ice. The Office of Workers' Compensation Programs accepted the claim as a no-time-lost case. The medical reports accompanying the February 1994 claim indicate that appellant received treatment for neck and back pain.¹

By decision dated July 19, 1995, the Office denied appellant's claim on the grounds that the evidence did not establish fact of injury. The Office found that while appellant established that the incident occurred at the time, place and in the manner alleged, the record contained no rationalized medical evidence based on an accurate history of injury supporting a causal relationship between her knee condition and the February 1995 employment incident.

Appellant, through her attorney, requested reconsideration and submitted additional medical evidence. By decision dated October 7, 1996, the Office denied modification of its prior decision.

¹ On March 3, 1995 appellant filed a notice of recurrence of disability on February 14, 1995 causally related to her February 23, 1994 employment injury. Appellant stated that she began having knee discomfort in May 1993; had continuous knee discomfort since her February 1994 fall, and fell again in the parking lot on February 14, 1995 which increased her knee pain. Appellant subsequently filed a claim for a traumatic injury occurring on that date.

The Board has duly reviewed the case record and finds that appellant has not met her burden of proof to establish that she sustained an injury on February 14, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act² 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 timely filed within the applicable time limitation period of the Act³ and that an injury was sustained in the performance of duty.⁴ These are essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

There is no dispute that appellant is a federal employee; that she timely filed her claim for compensation benefits, and that the February 14, 1995 incident occurred at the time, place and in the manner alleged. However, the medical evidence is insufficient to establish that appellant sustained an injury in the performance of duty on February 14, 1995 because it does not include a rationalized medical opinion explaining how her knee condition was caused or aggravated on that date.

In a report dated March 6, 1995, Dr. Dwight A. Webster, a Board-certified orthopedic surgeon, stated that appellant related a history of falling on her knees about one and a half years ago and "that she fell again on February 14, 1995 landing mostly on her hip and arm but that her knee pain again returned." Dr. Webster diagnosed a bilateral subluxed patella greater on the right and a possible loose body on the right. He indicated that he informed appellant that "this is probably a long[-]standing problem with her subluxed patella and that with her fall there was an acute exacerbation, possibly breaking off an osteophyte causing a loose body." He recommended arthroscopic surgery. Dr. Webster, however, based his opinion on an inaccurate history of injury, that of appellant falling on her knees around February 1994, as well as a history of appellant falling on her hip and arm instead of her knees in February 1995. Medical opinions which are based on an incomplete or inaccurate factual background are entitled to little probative value in establishing a claim for compensation benefits.⁶

In an office visit note dated April 3, 1995, Dr. Webster stated that appellant related that her "right knee symptoms began after a fall on February 22, 1994. Apparently previous to this injury she was asymptomatic in both knees." He diagnosed knee pain due to bilateral patellofemoral arthritis. Again, Dr. Webster noted an history of injury unsupported by the record, that of appellant experiencing right knee pain beginning after her 1994 fall. Further, as Dr. Webster did not relate the diagnosed condition to the February 14, 1995 incident, his opinion is of little relevance to the issue at hand.

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *James E. Chadden Sr.*, 40 ECAB 312 (1988).

⁵ *Delores C. Ellyet*, 41 ECAB 992 (1990).

⁶ *Daniel J. Overfield*, 42 ECAB 718 (1991).

In an undated form report, Dr. Webster diagnosed patellofemoral arthritis, greater of the right and checked “yes” that the condition was caused or aggravated by the described employment activity. The Board has held that an opinion on causal relationship which consists only of a physician checking “yes” to a medical form report question on whether the claimant’s condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁷

Appellant wrote to the Office and stated that Dr. Webster confused the chronology she provided him of her injuries. Appellant related that she initially injured her knees in a 1992 fall; that she reinjured her knee in 1993 hitting it against a desk drawer; and that her falls on February 23, 1994 and February 14, 1995 intensified her knee pain. Appellant also wrote to Dr. Webster requesting that he clarify her history of injury and provide a medical report conforming to the Office’s requirements.⁸

In a report dated August 9, 1995, Dr. Webster informed the Office that he had previously supplied a history of injury obtained from appellant. He diagnosed “severe patellofemoral arthritis, both knees, most symptomatic on the right side, possible loose body right knee.” Dr. Webster stated:

“X-rays taken in my office on March 6, 1995 show severe degenerative change of the patellofemoral joints. Degenerative changes were also noted on x-rays taken at St. Joseph’s Imaging Associates on May 12, 1993. This suggests that the degenerative arthritis has been present for some time. [Appellant] indicates that her knee symptoms have markedly deteriorated after her injury in February 1995. It seems reasonable that the symptoms from her degenerative changes were aggravated by this injury. It would be difficult for me to assign a specific percentage of her present problem to preexisting problems and those related to her injury. Persons with degenerative arthritis are more susceptible to persistent joint symptoms after injury.”

In an office visit note dated August 11, 1995, Dr. Webster stated, “I think [appellant’s] underlying degenerative arthritis was aggravated by the fall in the parking lot of February 14, 1995 which aggravated her underlying symptoms.” He attached appellant’s chronology of events to his report.

The Board has held that where an employee claims an aggravation of an underlying condition due to an employment injury, the employee must provide a rationalized medical opinion discussing the nature of the underlying condition, including its natural or traditional course, how the underlying condition may have been affected by appellant’s employment with reference to

⁷ *Lucrecia M. Nielson*, 41 ECAB 583 (1991).

⁸ The Office requested that appellant submit copies of medical reports pertaining to her medical treatment since 1993; however, appellant indicated that she would only submit reports regarding the February 1995 incident.

medical records and the effects, if any, on appellant's permanent condition.⁹ In his August 9 and 11, 1995 reports, however, Dr. Webster failed to sufficiently explain how the fall at work on February 14, 1995 caused an aggravation of appellant's preexisting degenerative arthritis of the knees. While a medical 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.¹⁰ Without a full discussion relating to the findings on diagnostic tests and an explanation of how the fall at work aggravated appellant's condition, Dr. Webster's reports are speculative. Accordingly, the Board finds that appellant has not sustained her burden of proof to establish an injury on February 14, 1995 as alleged.

The decision of the Office of Workers' Compensation Programs dated October 7, 1996 is hereby affirmed.

Dated, Washington, D.C.
April 27, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member

⁹ *Newton Ky Chung*, 39 ECAB 919 (1988). While an employee is entitled to compensation for periods of disability related to an aggravation of an underlying condition, established by the medical evidence, an employee is not entitled to compensation beyond such periods where the aggravation is temporary and leaves no permanent residuals.

¹⁰ *See Phillip J. Deroo*, 39 ECAB 1294 (1988).