

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VIVIAN H. NORRIS and U.S. POSTAL SERVICE,  
WILKINSBURG POST OFFICE, Pittsburgh, PA

*Docket No. 99-2237; Submitted on the Record;  
Issued December 8, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a right shoulder injury, back injury or a torn right medial meniscus in a May 5, 1997 fall which the Office of Workers' Compensation Programs accepted for a right knee contusion; and (2) whether the Office properly denied appellant's request for reconsideration.

On May 12, 1997 appellant, then a 47-year-old part-time letter carrier, filed a notice of traumatic injury alleging that on May 5, 1997 at 11:00 a.m., she missed a step, "lost [her] balance and fell to [her] knees on [her] right leg knee." The witness portion of the form was signed by Gary Giebler, her route trainer, who did not controvert appellant's account of events. Appellant stopped work on May 12, 1997 and sought medical treatment.<sup>1</sup>

In a May 12, 1997 report, Dr. H. Tauberg, an occupational health physician, provided a history of appellant falling "on right knee" on May 5, 1997, diagnosed "right knee contusion with effusion," prescribed sedentary duty and referred appellant to an emergency room. In a May 12, 1997 report, Dr. Joseph J. Lanzarotta, a physician specializing in emergency medicine noted a history of right knee pain beginning after the May 5, 1997 fall, no previous right knee injuries, a "normal" right knee x-ray and diagnosed a right knee contusion.<sup>2</sup> In a May 16, 1997 note, Dr. Tauberg found effusion and tenderness in the right knee and recommended limited duty. He released appellant to full duty on May 21, 1997.

On May 21, 1997 appellant was terminated from the employing establishment. Following her removal, she alleged that she injured her back and right shoulder in the May 5, 1997 fall, stating in a May 27, 1997 letter that her "arm was not affected" until "later" and that

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<sup>1</sup> Appellant was given a "seated[-]duty" assignment from May 13 to 21, 1997.

<sup>2</sup> In a May 12, 1997 x-ray report, Dr. Peter M. Bonadio, a radiologist, found "[s]light apparent joint compartment narrowing [which] may be an artifact of technique," without "evidence of fracture, dislocation or other bony, [or] soft tissue abnormality." He stated an impression of "[n]ormal appearing right knee."

she tried to break her fall with her right arm. In a July 21, 1997 letter, appellant alleged that she struck the “whole right side of [her] body” and twisted her back.

On June 13, 1997 the Office accepted that appellant sustained a right knee contusion,<sup>3</sup> noting that there was “no medical evidence” to support an arm injury.<sup>4</sup> Appellant submitted medical evidence which she alleged supported injury to her right shoulder and back in the May 5, 1997 fall.<sup>5</sup>

In a May 29, 1997 report, Dr. David C. Neuschwander, an attending Board-certified orthopedic surgeon, related appellant’s account of falling “directly onto her knee and injur[ing] her right shoulder at the same time” on May 5, 1997. Dr. Neuschwander noted findings on examination including right knee effusion and tenderness, and a positive Jobe’s test indicating “pain and weakness” in the right shoulder. Right shoulder x-rays showed a “Type II acromion” and right knee x-rays showed “no significant abnormality.” He diagnosed “traumatic right shoulder rotator cuff tendinitis” and “right knee traumatic patellofemoral arthralgia with pes bursitis.” Dr. Neuschwander found appellant fit for light duty, prescribed medication and physical therapy.

By decision dated August 14, 1997, the Office denied appellant’s claims for compensation on and after May 5, 1997, on the grounds that she submitted insufficient medical evidence to establish disability for work due to the accepted knee contusion. The Office further found that appellant submitted insufficient medical evidence to establish a right shoulder or back injury as a result of the May 5, 1997 fall. Appellant disagreed with this decision and in an

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<sup>3</sup> Appellant filed claims for continuing compensation for the periods May 21 to June 20, June 28 to July 4, 1997, May 2 to August 1, August 8 to 22, August 28 to September 15, September 19 to October 10 and October 17 to 31, 1998.

<sup>4</sup> In a July 11, 1997 letter, the Office requested that appellant provide additional factual and medical information concerning her claimed right arm injury.

<sup>5</sup> Appellant also submitted a series of reports dated June 20, 1997 to July 15, 1998 from Dr. Martin L. Novak, a chiropractor, who provided manual manipulation to treat “thoracic radiculitis” and “subluxation T4.” As Dr. Novak diagnosed a spinal subluxation by x-ray, he is considered to be a physician under the Federal Employees’ Compensation Act for the purposes of this case regarding appellant’s claimed back condition, but not the alleged shoulder or knee conditions. Section 8102(2) of the Act recognizes chiropractors as physicians “only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist....” 5 U.S.C. § 8101(2). See *Marjorie S. Geer*, 39 ECAB 1099, 1101-02 (1988). A chiropractor’s opinion on conditions on members of the body other than the spine, such as the shoulder or knee, is not considered to be medical evidence. See *George E. Williams*, 44 ECAB 530 (1993). The Board notes, however, that Dr. Novak did not discuss causal relationship in his reports and that therefore his opinion is of little probative value in establishing this critical issue. *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

August 28, 1997 letter, requested an oral hearing before a representative of the Office's Branch of Hearings and Review,<sup>6</sup> held July 29, 1998.<sup>7</sup>

Appellant submitted medical reports from Dr. C. Charles Ianuzzi, an attending family practitioner, who began treating appellant on May 2, 1998. In a May 2, 1998 report, Dr. Ianuzzi, noted that appellant experienced knee and back pain after the May 5, 1997 fall. On examination, he found "mild scoliosis of the spine" and diagnosed "[r]ight knee pain and joint effusion...." In a June 4, 1998 form report, Dr. Ianuzzi indicated that appellant was permanently disabled for work due to "myalgia and arthralgia," "internal derangement" of the right shoulder and right knee," and "chronic fatigue" secondary to those conditions.<sup>8</sup> In a July 20, 1998 report, he concluded that, "within a reasonable degree of medical certitude, that the incident that occurred on May 5, 1997 was the cause of [appellant's] shoulder and knee problems."

Appellant also submitted reports from Dr. Richard S. Gehl, an attending orthopedic surgeon who began treating appellant in June 1998. In a July 20, 1998 report, Dr. Gehl stated that June 15, 1998 magnetic resonance imaging (MRI) scans showed "osteoarthritis patella femoral joint, medial meniscus tear and a loose body" in the right knee," and an impingement syndrome of the right shoulder. Regarding causal relationship, he opined that appellant's "shoulder pain was caused by her [May 5, 1997] injury and the present complaints are secondary to this impingement syndrome. [Appellant's] osteoarthritis was not caused by her accident, but her meniscus tear according to her history was and the loose body was probably there previously, but was aggravated by her work[-]related injury." Dr. Gehl performed right knee arthroscopy on August 18, 1998, submitting periodic reports through September 2, 1998 finding appellant disabled for work and prescribing physical therapy. In an October 29, 1998 report, he found a small tear of the right rotator cuff with impingement syndrome, requiring physical therapy and possible surgery. Dr. Gehl provided a date of injury as May 5, 1997.

By decision dated and finalized October 15, 1998, the Office hearing representative affirmed the Office's August 14, 1997 decision, finding that appellant submitted insufficient evidence that she was totally disabled for work on and after May 22, 1997 due to the May 5, 1997 fall or that she sustained a right shoulder injury in the May 5, 1997 fall. The Office hearing representative found that, while Dr. Neuschwander mentioned both a right knee and shoulder injury in his May 29, 1997 report, he did not explain whether those conditions were due to the May 5, 1997 fall. The hearing representative noted that Drs. Gehl and Ianuzzi provided insufficient medical rationale regarding whether the right knee derangement was related to the May 5, 1997 fall.

Appellant disagreed with this decision and in an April 9, 1999 letter requested reconsideration and submitted additional evidence.

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<sup>6</sup> In a March 11, 1998 letter, the Office's Branch of Hearings and Review, advised appellant that she could request a review of the written record in lieu of an oral hearing. The Office also noted that appellant had submitted reports from a chiropractor and explained the Act's limitations on chiropractors.

<sup>7</sup> At the July 29, 1998 hearing, appellant reiterated her assertion that she sustained right knee, right shoulder and back injuries in the May 5, 1997 fall, and that Mr. Giebler instructed her on May 5, 1997 not to report the full extent of her injuries or she would be fired.

<sup>8</sup> Dr. Ianuzzi submitted periodic form reports May 30 to November 10, 1998 diagnosing "pathology" of the right knee and shoulder, and finding appellant indefinitely disabled for work.

In a December 19, 1998 affidavit, Nelson Norris, appellant's husband, stated that, after work on May 5, 1997, appellant complained of severe right knee and shoulder pain which she attributed to falling at work that day, striking "her knee and shoulder." In a January 26, 1999 affidavit, Sylvania R. Thornton, a coworker of appellant's, stated that, on May 5, 1997, appellant "was limping and had trouble holding the mailbag," and appeared "in pain."

In a January 5, 1999 report, Dr. Ianuzzi stated that appellant had no right knee or shoulder problems prior to May 5, 1997, and opined that the "internal derangement of her right knee" and an impingement syndrome of the right shoulder were both caused by "the fall that occurred while [appellant] was working on May 5, 1997."

In a March 10, 1999 report, Dr. Gehl explained that the degenerative tears and osteoarthritis of appellant's right knee were chronic, and not "secondary to an acute injury." He opined that "rotator cuff and impingement syndromes are usually chronic, but with an acute fall it is likely that the fall caused a small rotator cuff tear."

By decision dated April 26, 1999, the Office denied reconsideration on the grounds that the evidence submitted was "repetitious" and therefore insufficient to warrant a review of the case on the merits. The Office found that the two statements were of little relevance as neither individual actually witnessed appellant's fall and that Dr. Ianuzzi's January 5, 1999 report, and Dr. Gehl's March 11, 1999 report merely repeated findings stated in their July 20, 1998 reports already of record.

The Board finds that appellant has not established that she sustained a right shoulder injury, back injury or a torn right medial meniscus in a May 5, 1997 fall, in which the Office accepted that she sustained a right knee contusion.

When an employee claims a new injury or condition causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the newly alleged condition and any related period of disability, are causally related to the accepted injury. It is not sufficient merely to establish the presence of a condition. In order to establish his or her claim, appellant must also submit rationalized medical evidence, based on a complete and accurate factual and medical background, showing a causal relationship between the employment injury and the claimed conditions.<sup>9</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her accepted right knee injury, the new back and shoulder injuries, and the May 5, 1997 fall.<sup>10</sup> Causal relationship is a medical issue.<sup>11</sup> The medical evidence required to establish a causal relationship, generally, is medical opinion evidence,<sup>12</sup> of reasonable medical certainty,<sup>13</sup> supported by medical rationale explaining the

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<sup>9</sup> See *Armando Colon*, 41 ECAB 563 (1990).

<sup>10</sup> *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>11</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>12</sup> See *Naomi Lilly*, 10 ECAB 560, 572-73 (1959).

<sup>13</sup> See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>14</sup> An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's belief of causal relation unsupported by the medical record.<sup>15</sup>

A threshold problem with establishing causal relationship in this case between the May 5, 1997 fall and a right shoulder injury, back injury or right knee condition other than a contusion is that appellant altered her account of the fall over time. In her May 12, 1997 claim form, appellant stated that she "fell to [her] knees, on [her] right leg knee." Mr. Giebler, a coworker and trainer who witnessed the incident, did not controvert appellant's statement and reiterated in an August 1998 affidavit that appellant fell on her knee only. However, beginning with a May 27, 1997 letter, appellant alleged that she injured her right shoulder contending she tried to break her fall with her right arm, later expanding her recollection in a July 21, 1997 letter to include striking the "whole right side of [her] body" and twisting her back. Thus, there is conflicting evidence as to the precise mechanisms of injury.

A second difficulty in establishing causal relationship of a right shoulder, back or right knee condition to the May 5, 1997 fall is that the reports most contemporaneous to that incident do not mention a right shoulder or back injury, or that the nature of the right knee injury was more severe than a contusion. In May 12, 1997 reports, Dr. Tauberg, an occupational health physician, and Dr. Lanzarotta, an emergency room physician, both diagnosed a right knee contusion sustained in the May 5, 1997 fall. Right knee x-rays obtained on May 12, 1997 were "normal." Neither physician mentioned complaint of a back or right shoulder injury, or opined that findings on examination or radiographic study were indicative of a condition other than a right knee contusion.<sup>16</sup> Therefore, the reports of Drs. Tauberg and Lanzarotta negate a causal relationship of a back, shoulder injury or knee injury other than the diagnosed knee contusion.

The next medical evidence of record is the May 2, 1998 report of Dr. Ianuzzi, an attending family practitioner, who did not treat appellant until almost a year after the May 5, 1997 fall. He diagnosed internal derangement of the right knee and shoulder, noting in a July 20, 1998 report that these conditions were due to the May 5, 1997 fall. However, Dr. Ianuzzi's opinion on causal relationship is based only on appellant's account of events, and not on any direct clinical observations at the time of the May 5, 1997 fall. His opinion on causal relationship is therefore of diminished probative value.<sup>17</sup> Dr. Ianuzzi's opinion is further diminished as it is based on appellant's recollections, which equivocate on such basic issues as whether she struck her right shoulder.<sup>18</sup>

Similarly, the reports of Dr. Gehl, an attending orthopedic surgeon who began treating appellant in June 1998, more than a year after the May 5, 1997 fall, are also of diminished

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<sup>14</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>15</sup> *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>16</sup> The reports of Dr. Novak, a chiropractor, dated June 20, 1997 to July 15, 1998, do not discuss causal relationship. See *supra* note 5.

<sup>17</sup> See *Barbara J. Hines*, 37 ECAB 445 (1986).

<sup>18</sup> See *Cowan Mullins*, 8 ECAB 155 (1955).

probative value as they are not sufficiently contemporaneous to the initial injury. He opined on July 20, 1998 that the May 5, 1997 fall caused a right medial meniscus tear and aggravation of a preexisting loose body in the knee. On October 29, 1998 Dr. Gehl stated that a small rotator cuff tear of the right shoulder was also due to that fall. However, he did not provide medical rationale explaining how and why the May 5, 1997 fall would cause the right shoulder condition, or why the diagnosed right knee pathologies were not evident as of May 12, 1997 clinical examinations and right knee x-rays. Dr. Gehl's reports are therefore of very little probative value in establishing causal relationship in this case.<sup>19</sup>

Thus, appellant has failed to establish that she sustained a right knee injury other than a contusion, a right shoulder or back injury in the May 5, 1997 fall, as she submitted equivocal factual evidence and insufficiently rationalized medical evidence.

Regarding the second issue, the Board finds that the Office properly denied appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>20</sup> the Office's regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>21</sup> Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.<sup>22</sup>

In support of her reconsideration request, appellant submitted a December 19, 1998 affidavit from her husband, Mr. Norris, a January 26, 1999 affidavit from a coworker, a January 5, 1999 report from Dr. Ianuzzi and March 10, 1999 report from Dr. Gehl. The decision dated and finalized October 15, 1998 denying her claim was based on appellant's failure to establish causal relationship. Section 10.606(b) provides that appellant must submit new and relevant evidence to require reopening her case for merit review. Thus, in order to qualify as relevant, the evidence submitted must address the critical issue of establishing causal relationship.

The two affidavits merely reiterate appellant's account of the May 5, 1997 fall and her subsequent symptoms without providing corroboration, as neither affiant witnessed the May 5, 1997 incident. Therefore, they do not constitute relevant evidence. Dr. Gehl's March 10, 1999 report repeats findings and opinion expressed in his July 20 and October 29, 1998 reports, already of record. Similarly, Dr. Ianuzzi's January 5, 1999 report reiterates his opinion previously of record in his July 20, 1998 report. Two medical reports are repetitious in nature and are therefore insufficient to warrant reopening appellant's case on the merits.<sup>23</sup> Appellant

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<sup>19</sup> *Lucrecia Nielsen, supra* note 5.

<sup>20</sup> 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.")

<sup>21</sup> 20 C.F.R. § 10.608(b).

<sup>22</sup> 20 C.F.R. § 10.606(b)(2); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

<sup>23</sup> Material which is repetitious or duplicative of that already in the case record has no evidentiary value in

has not submitted new and relevant evidence, nor has she met any of the requirements of section 10.606(b)(2). Accordingly, the Board finds that the Office properly refused to reopen the case for merit review in this case.

The decisions of the Office of Workers' Compensation Programs dated April 26, 1999 and October 15, 1998 are affirmed.

Dated, Washington, DC  
December 8, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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establishing a claim and does not constitute a basis for reopening a case. *James A. England*, 47 ECAB 115 (1995).