

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EVELYN E. SYLVESTER and DEPARTMENT OF THE AIR FORCE,
ROBINS AIR FORCE BASE, GA

*Docket No. 99-2135; Submitted on the Record;
Issued November 2, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that she was disabled from June 15 to 28, 1998 due to her October 31, 1985 employment injury.

On November 1, 1985 appellant, then a 56-year-old supply clerk, filed a claim for injuries sustained on October 31, 1985 when she was hit by an automobile while crossing the street. The Office of Workers' Compensation Programs accepted appellant's claim for a fracture of the left leg and degenerative arthritis of the left knee.

Appellant returned to work on May 19, 1986.¹ The Office authorized an August 23, 1996 diagnostic arthroscopy of the left knee. Following the surgery, appellant returned to work on October 16, 1996 with permanent limitations on walking, climbing and squatting.² By letter dated March 19, 1998, appellant requested Office approval for treatment of her right leg problems which she attributed to her accepted employment injury.

On June 19, 1998 appellant filed a claim for compensation on account of traumatic injury or occupational disease (Form CA-7) requesting compensation for temporary total disability from June 15 to 28, 1998.

By decision dated August 10, 1998, the Office denied appellant's claim for a consequential injury of the right knee. In a letter received by the Office on September 28, 1998,

¹ By decision dated June 12, 1987, the Office issued appellant a schedule award for a 19 percent loss of use of the left lower extremity.

² The employing establishment indicated in an internal memorandum that appellant's position had not been modified for her work restrictions as it was a desk job that did not require much walking, climbing and squatting.

appellant requested reconsideration. The Office denied appellant's request for reconsideration in a nonmerit decision dated November 16, 1998.³

By decision dated February 8, 1999, the Office denied appellant's claim for compensation from June 15 to 28, 1998 on the grounds that the medical evidence was insufficient to establish a causal relationship with the accepted employment injury. In a letter dated March 31, 1999, appellant, through her congressman, requested reconsideration of the February 8, 1999 decision. By decision dated April 28, 1999, the Office denied modification of its February 8, 1999 decision.⁴

The Board finds that appellant has not established that she was totally disabled from June 15 to 28, 1998 causally related to her October 31, 1985 employment injury.

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 an injury was sustained 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

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury. The medical opinion must be based on complete factual and medical backgrounds with an accurate history of the claimant's employment injury, and must explain from a medical perspective how the current condition is related to the injury.⁷

In an office visit note dated June 15, 1998, Dr. P. Jeffrey Jarrett, a Board-certified orthopedic surgeon and appellant's attending physician, discussed her complaints of "worsening pain over the past weeks. The pain is more or less activity related." On physical examination he noted findings unchanged from the prior evaluation and diagnosed "persistent right lower extremity pain syndrome secondary to overuse" and "persistent left leg pain/ knee pain secondary to old fracture." Dr. Jarrett opined that appellant was disabled from work for at least

³ Appellant has not appealed these decisions; therefore, they are not before the Board.

⁴ Appellant filed her appeal with the Board on June 10, 1999. She also requested reconsideration by the Office in a letter dated June 7, 1999. By decision dated June 29, 1999, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and cumulative and thus insufficient to warrant merit review of her claim. The Office's June 29, 1999 decision is null and void as both the Board and the Office cannot have jurisdiction over the same issue in the same case. *Douglas E. Billings*, 41 ECAB 880 (1990). The Board further notes that the additional evidence submitted by appellant after the Office's April 28, 1999 decision, the last decision issued by the Office prior to appellant's appeal to the Board, represents new evidence which cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office's at the time of the final decision before the Board. 20 C.F.R. § 501.2(c).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

the next two weeks. However, he did not specifically attribute appellant's disability from work to her prior employment injury or provide any rationale for his findings and thus his opinion is of little probative value. The opinion of a physician supporting causal relationship must be supported by affirmative evidence, address the specific factual and medical evidence of record and be explained by medical rationale.⁸

In a report dated March 6, 1999, Dr. Jarrett related:

“[Appellant] was seen in the office on June 15, 1998. As you know, I have been following [appellant] over the past years for persistent left leg pain/knee pain related to her old originally accepted work[-]related injury. Though I did not specifically state it in the medical record it was indeed implied that her worsening symptoms were related to her original injury. Though the note indicated that her physical exam[ination] was pretty much unchanged from her last evaluation, as you know, pain is a subjective complaint and I had nothing to go on but [appellant's] history to me as her objective findings had not changed. I, therefore, believe that [appellant's] period of disability from June 15 through 28, 1998 is related to her originally accepted injury and therefore the disallowance should be reconsidered.”

Dr. Jarrett noted that there were no findings on physical examination to support his conclusion that appellant was disabled from employment. He based his disability finding on appellant's subjective complaints of pain. In this connection when an employee is injured, he or she is entitled to compensation for all injuries proximately caused by the trauma. This would apply, as in the instant claim, to a situation of increasing pain from a prior employment-related injury or even to a preexisting condition due to trauma or injury.

However, because pain is a subjective symptom, a physician must relate the pain to any disability. In addition, the physician should describe the pain precisely.

Because there does not appear to be a single procedure nor any single means of accurately assessing the severity of pain except for the history given by the employee, the physician's determination that pain disables an employee for work, as is the case herein, must be supported by a comprehensive analysis of all known facts, clinical findings and tests.

Dr. Jarrett's analysis, recitation of facts, clinical findings and tests fall short of the evidence required in the instant claim to meet appellant's burden of proof that pain alone incapacitated her for work.

⁸ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

The decisions of the Office of Workers' Compensation Programs dated April 28 and February 8, 1999 are hereby affirmed.

Dated, Washington, DC
November 2, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member