

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ADRENA V. NICHOLS and SOCIAL SECURITY ADMINISTRATION,
Baltimore, MD

*Docket No. 00-2474; Submitted on the Record;
Issued August 15, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability in October 1997 causally related to her December 18, 1996 employment injury.

The Board has reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of disability in October 1997 causally related to her December 18, 1996 employment injury.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.¹ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.² Where no such rationale is present, medical evidence is of diminished probative value.³

On December 18, 1996 appellant, then a 47-year-old program analyst, sustained a right ankle sprain, right knee contusion and a right knee medial meniscal tear in the performance of duty. She returned to full duty on June 23, 1997 following right knee surgery on May 28, 1997. On December 7, 1998 appellant underwent left knee surgery.

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

² *Mary S. Brock*, 40 ECAB 461, 471 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

On May 18, 1999 appellant filed a claim for a recurrence of disability in October 1997. She stated that, while she was using crutches during her recuperation from right knee surgery, she experienced periodic pain in her left knee and the left knee began to swell on October 21, 1997.

By decision dated August 17, 1999, the Office of Workers' Compensation Programs denied appellant's claim for a recurrence of disability in October 1997.

By decision dated December 23, 1999, an Office hearing representative remanded the case for further development.

By decision dated May 5, 2000, the Office denied appellant's claim for a recurrence of disability in October 1997 on the grounds that the weight of the medical evidence established that her left knee condition was not causally related to her December 18, 1996 employment injury.

In a disability certificate dated October 21, 1997, Dr. Christopher Zajac indicated that appellant was examined on that date. In a disability certificate dated October 31, 1997, he indicated that she was disabled on that date due to arthritis. In a disability certificate dated January 7, 1998, Dr. Zajac indicated that appellant could return to full duty on January 8, 1998. In a disability certificate dated June 1, 1998, he indicated that appellant was disabled on that date due to swollen legs.

In a report dated December 9, 1997, Dr. Ira Gubernick, appellant's attending Board-certified orthopedic surgeon, stated that she had been experiencing pain in her left knee for several weeks.

In a report dated February 19, 1998, Dr. Paul A. Gertler, a rheumatologist, diagnosed severe osteoarthritis of both knees.

In a report dated February 20, 1998, Dr. Gubernick stated that recent magnetic resonance imaging scans of both knees revealed changes consistent with arthritis in the medial joint compartment of both knees and in the patellofemoral joint of the left knee.

In a report dated November 10, 1999, Dr. Robert W. Macht, a Board-certified surgeon, provided a history of appellant's condition and findings on examination. He stated that appellant injured her right leg in December 1996 and underwent surgery to her right knee in May 1997. Dr. Macht stated:

"After surgery, [appellant] had limited weight bearing with crutches. Based on medical probability principal[ly] due to the additional stress put on her left leg because of her right leg condition she developed pain in that leg. Therefore based on medical probability there is a causal connection of her left leg problems with the injury of December 18, 1996."

In a report dated April 27, 2000, Dr. William I. Smulyan, a Board-certified orthopedic surgeon and Office referral physician, provided a history of appellant's condition, a review of the medical evidence, findings on examination and the result of x-rays. He stated:

"The patient has degenerative osteoarthritis of both knees. Her condition has progressed since treatment began following the injury of December 18, 1996. It is my opinion that the *left* knee condition is *not* a consequence of the injury of December 1996 and the subsequent surgery of May 1997. The patient has preexisting degenerative osteoarthritis of the left knee. Therefore, it is my opinion that the osteoarthritis of the left knee was not affected by increased use of the employee's left leg following her right knee injury and surgery. I would have anticipated that these symptoms would have become exacerbated sooner following the surgery and crutch-assisted ambulation and sooner following the surgery than in October 1997." (Emphasis in the original.)

The Board finds that Dr. Smulyan's opinion represents the weight of the medical evidence in this case. His report is based upon a complete and accurate factual and medical history and he provided medical rationale in support of his opinion that appellant's leg condition was not causally related to her December 18, 1996 employment injury.

Dr. Macht's November 10, 1999 report is not sufficient to establish that appellant's left leg condition was causally related to her December 18, 1996 employment injury. He was not one of appellant's treating physicians and did not seem to be aware that her left knee symptoms first appeared five months after her May 28, 1997 right knee surgery. It appears that he assumed that the left knee problems began during appellant's recuperation from her May 28, 1997 surgery. Furthermore, Dr. Macht did not explain why appellant's left leg condition could not have been due to the natural progression of her preexisting osteoarthritis in her left leg rather than to her right leg injury. Due to these deficiencies, Dr. Macht's report is not sufficient to discharge appellant's burden of proof.

Appellant's treating physicians, Drs. Gubernick, Zajac, and Gertler, did not provide rationalized medical opinions explaining how her left leg problems were causally related to her December 18, 1996 employment injury. Therefore, their reports are not sufficient to establish that appellant's left leg condition and claimed disability in October 1997 were causally related to her December 18, 1996 employment injury.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁴ Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied appellant's claim for compensation.

⁴ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

The decisions of the Office of Workers' Compensation Programs dated May 5, 2000 and December 23 and August 17, 1999 are affirmed.

Dated, Washington, DC
August 15, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member