

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CRYSTAL M. LEE and DEPARTMENT OF VETERANS AFFAIRS
VETERANS ADMINISTRATION MEDICAL CENTER, Battle Creek, MI

*Docket No. 01-477; Submitted on the Record;
Issued October 17, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty on August 10, 1997.

This case has been on appeal previously.¹ On August 11, 1997 appellant, then a 50-year-old pharmacy technician filed a notice of traumatic injury and claim for continuation of pay (Form CA-1). She alleged that on August 10, 1997 she sustained an employment-related injury to her left knee when she stood up and heard a "cracking" sound and experienced sharp pain. In a decision dated November 21, 1997, the Office of Workers' Compensation Programs denied appellant's claim, finding that she failed to establish fact of injury. In a January 7, 2000 decision, the Board, affirming the decision of the Office, noted that appellant failed to establish that she sustained an injury in the performance of duty on August 10, 1997.²

Appellant requested reconsideration on September 18, 2000 and submitted additional medical evidence.

In an April 12, 2000 report, Dr. Earl S. Rhind, a Board-certified orthopedic surgeon, indicated that he examined appellant and noted her history of injury and treatment. He noted that appellant reported she first injured her knees in 1995. Appellant stated that there was a sidewalk that was in poor repair, she caught her foot, stumbled and fell forward, injuring her right wrist and both knees while she was leaving work enroute to the parking lot. Appellant was off work for two or three days and the right wrist healed. Dr. Rhind also stated that, prior to this fall, appellant stated that she did not have any problems with her knees, although she

¹ Docket No. 98-1473 (issued January 7, 2000). The history of the case is contained in the prior decision and is incorporated by reference.

² The Board found that the claimed incident occurred at the time, place and in the manner alleged by appellant, however, there were no medical reports of file which explained the mechanism of injury.

experienced problems with her back. He noted that, on August 10, 1997, “[appellant] was at work and got up off a toilet and as she did, she felt or heard a ‘popping sound’ followed immediately by markedly increased pain in her left knee.” Dr. Rhind indicated that appellant subsequently had an arthroscopy of her left knee in September of 1998 and was off work for about four weeks. He indicated that appellant’s right knee was vaguely aching and sore since her fall in 1995. Dr. Rhind also indicated that appellant stated she had a fall down a ramp, between two buildings at the employing establishment on June 26, 1996 while she was working. He stated that appellant was anticipating arthroscopy of the right knee. Dr. Rhind stated that appellant had advanced arthritis in the left knee, which involved both the central and posterior portions of the medial and lateral femoral condyle and was associated with a Baker’s cyst. He also suspected similar but less intense degenerative and post-traumatic arthritis of the right knee. Dr. Rhind anticipated progressive deterioration of the left knee, leading to a total knee joint replacement. He indicated that the right knee needed a staging arthroscopy in order to determine the level of deterioration, without which a prognosis could not be made. Dr. Rhind also stated that he believed that treatment for appellant’s knee problems necessitated addressing medical issues and that the medical problems were not work related. He recommended a blended sit/stand option for her work restrictions, which included avoiding or minimizing stairs, kneeling, crawling and avoiding rough or uneven surfaces. Dr. Rhind further noted that prior to 1995 appellant had no knee complaints. He stated that appellant had some pain in her knees subsequent to her initial fall and that her “current knee problems were directly related back to her fall in 1995 and to subsequent events which are part of her medical record.”

In an April 20, 2000 radiology report, Dr. Bradley T. Van Assche, Board-certified in diagnostic radiology, indicated that the right knee showed some degenerative changes which predominate medically, yet little in the way of joint space narrowing is seen here. He also stated that the left knee showed predominate joint space narrowing of its lateral compartment with resultant hypertrophic changes and spurring depicted as described above.

In an April 20, 2000 multiaxial evaluation report, Dr. Rhind diagnosed osteoarthritis of the left knee, Baker’s cyst in the left knee and osteoarthritis post-traumatic syndrome in the right knee. He also enclosed his range of motion reports. Dr. Rhind indicated that appellant could perform light duty composed of some sedentary lifting of 0 to 20 pounds but not repeatedly, she could walk, stand and sit but this must be blended. He further indicated that appellant could not stoop, kneel, do repeated bending or climbing. Dr. Rhind also indicated that appellant could lift less than 10 pounds in a competitive work situation. He enclosed a copy of his examination protocol and his evaluation procedures.

By decision dated September 22, 2000, the Office denied modification of the January 7, 2000 decision. The Office found that the evidence submitted in support of appellant’s request for reconsideration was insufficient to warrant modification of its prior decision.

The Board finds that appellant has not established that she sustained an injury in the performance of duty on August 10, 1997.

An employee seeking benefits under the Federal Employees’ Compensation Act 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

filed within the applicable time limitation of the Act, 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.”³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.⁵

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁶

Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. 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.⁷ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician’s opinion.⁸

In the present case, it is not disputed that the incident occurred at the time, place and in the manner alleged.

However, the Board finds that appellant has not established that the August 10, 1997 employment incident resulted in an injury. She submitted reports dated April 12 and April 20, 2000, from Dr. Rhind and supporting documentation from his examination. He indicated that

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁵ *Elaine Pendleton*, *supra* note 1.

⁶ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁷ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁸ *James Mack*, 43 ECAB 321 (1991).

appellant reported an injury in relation to a trip and fall while leaving work in 1995. However, Dr. Rhind did not express an opinion that the claimant's condition was causally related to the August 10, 1997 incident as opposed to the incident in 1995, which is not before the Board on the present appeal. His reports address other employment incidents alleged by appellant which the record on appeal does not establish as accepted by the Office. Additionally, he did not provide medical rationale supporting such an opinion based upon a complete history.⁹ The record reflects that appellant did not report any other work-related injuries,¹⁰ with the exception of a June 23, 1988 claim for lumbar strain nor does it reflect that the Office accepted anything other than the 1988 claim.¹¹ Furthermore, Dr. Rhind did not attempt to explain how his diagnosis of far advanced arthritis of the left knee associated with a Baker's cyst and degenerative post-traumatic arthritis of the right knee was related to the accepted 1997 incident at work. He did not offer sufficient medical rationale explaining the nature of the relationship between the diagnosed condition and the accepted employment incident in this case.¹²

Appellant also submitted a diagnostic report from Dr. Van Assche; however, this report is of limited probative value because it addresses only appellant's symptoms and diagnosis. Dr. Van Assche did not address the causal relationship of any findings to the August 10, 1997 incident.¹³

As appellant has not submitted the requisite medical evidence needed to establish her claim, she has failed to meet her burden of proof.

⁹ *Arlonia B. Taylor*, 44 ECAB 591 (1993).

¹⁰ The Office advised that appellant never filed a claim regarding the alleged injury of April 25, 1995.

¹¹ The record reflects that appellant submitted a date stamped copy of a claim (Form CA-1) for an April 24, 1995 injury; however, the Board cannot review such evidence for the first time on appeal. Additionally, the record does not show that this claim was developed by the Office in the claim file that is before the Board. Consequently, the Board has no jurisdiction over this aspect of appellant's claim. 20 C.F.R. § 501.2 (c).

¹² The opinion of a physician supporting causal relationship must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate factual and medical background. *Connie Johns*, 44 ECAB 560 (1993).

¹³ *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.); *see also George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

The decision of the Office of Workers' Compensation Programs dated September 22, 2000 is affirmed.

Dated, Washington, DC
October 17, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member