

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARMEN AGUINS and DEPARTMENT OF HOUSING & URBAN
DEVELOPMENT, Los Angeles, CA

*Docket No. 01-297; Submitted on the Record;
Issued September 25, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant established that her condition is causally related to factors of her federal employment.

On May 20, 1992 appellant, then a 56-year-old program assistant, filed a notice of traumatic injury claiming that on May 12, 1992 she injured her wrist and left knee when she tripped and fell over a box at work. Appellant's claim was accepted on July 14, 1992 for contusion of the left knee. Appellant stopped work on May 13, 1992. She also previously had a torn ligament in the left knee, for which surgery was performed.

By decision dated January 21, 1993, the Office of Workers' Compensation Programs terminated appellant's compensation benefits as the weight of the medical evidence established that she no longer suffered any residuals of her May 12, 1992 work injury. Appellant was placed on limited duty.

On November 13, 1999 appellant filed a notice of recurrence, alleging that she suffered a recurrence on April 17, 1999 because of her limited duties. Appellant stated that she had increased difficulty standing and walking, going up and down stairs and that she had an increase in swelling and deformity in her left knee. She claimed that her supervisor did not allow her to perform sit-down duties only as prescribed by her physician and that her supervisor had told her to perform unlimited duties or quit.

By letter dated March 25, 2000, the Office informed appellant that they were unable to process her claim as a recurrence since her benefits were terminated on January 26, 1993 when the Office found that she no longer suffered from residuals. The Office stated, however, that appellant may pursue her claim as a work-related condition by filing a notice of occupational disease.

On April 10, 2000 appellant filed a notice of occupational disease, stating that her work duties affected her left knee condition and that her condition got progressively worse until she was in constant pain.

In support of her claim appellant submitted a report from Dr. Gustav Salkinder, a Board-certified orthopaedic surgeon, dated April 18, 2000. Dr. Salkinder opined that appellant's current employment duties contributed to the progressive nature of her left knee problem and resulted in severe degenerative arthritis of the left knee.

By letter dated May 24, 2000, the Office requested that appellant and her employing agency submit additional information regarding her job activities, which may have aggravated her condition.

Appellant submitted a personal statement dated June 22, 2000, in which she described the amount of walking she had to do for the past two years in her limited-duty position.

Appellant's supervisor responded, by letter dated June 6, 2000, by stating that appellant did have to walk or stand approximately 2 to 3 hours per day. Appellant's supervisor described appellant's allegations as "vague," and stated: "Based on the foregoing, I am neither in a position to concur or disagree with the employee's allegations."

By decision dated September 15, 2000, the Office denied appellant's claim finding that the medical evidence of record failed to establish that her condition was causally related to the May 12, 1992 injury or to factors of her federal employment.

The Board finds that this case is not in posture for decision and requires further development by the Office.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 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.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In this case, the Office, in its September 15, 2000 decision, based its denial on the medical evidence of record, finding that it was insufficient to establish that appellant's left knee condition was related to factors of her federal employment. The Board finds, however, that there is sufficient medical evidence in the case record supporting appellant's contention that her

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

condition was aggravated by factors of her employment to require further development of the record.

It is well established that proceedings under the Act⁴ are not adversarial in nature⁵ and while the claimant has the burden to establish entitlement to compensation the Office shares responsibility in the development of the evidence.⁶ The Office has an obligation to see that justice is done.⁷

The record contains medical evidence from appellant's physician supporting appellant's claim⁸ that her diagnosed condition was aggravated by her employment. In addition, there is no medical evidence of record disagreeing with appellant's physician that her employment duties aggravated her left knee condition.

In Dr. Salkinder's report dated April 18, 2000, he stated:

"... [t]he patient developed problems with the left knee after the work-related injury of 1992. Since 1992 the patient had progressing problems with her left knee, which was aggravated by prolonged walking and standing that she had to do at work while performing her normal and customary duties. It is true that her condition originated in 1992, as a result of a specific injury. It has to be noted, however, that the patient's day to day work-related activities which involved standing and walking contributed to the progressive nature of her left knee problem and resulted in severe degenerative arthritis of the left knee."

He continued:

"It is, therefore, fair to say with reasonable medical probability, that the patient's initial injury was caused by the accident in April of 1992, however, the patient's normal and customary work-related activities contributed and caused the progressive nature of her left knee problem which resulted in left total knee replacement on [September 28, 1999]."

The Board also notes that appellant alleged that her limited duties did not correlate with the restrictions outlined by her physician, Dr. Sami Khoury. In a report dated July 31, 1992, Dr. Khoury indicated that appellant could walk intermittently for 2 hours per day and could stand intermittently for up to 3 hours per day. In two other reports dated October 15 and December 3, 1992, however, he indicated that appellant could both walk and stand intermittently for 2 hours per day. In addition, appellant's supervisor, Cameron Eldredge, agreed with appellant that she

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Id.*

⁸ *Horace Langhorne*, 29 ECAB 820 (1978).

was required to walk or stand approximately 2 to 3 hours in small increments throughout the day. The Board notes that this issue also requires further development by the Office.

While the medical opinion of record is not consistent as to whether appellant's 1992 injury or a previous injury caused the condition, medical rationale has been provided in support of a finding that appellant's limited employment duties aggravated her condition. Although the medical evidence submitted by appellant is not sufficient to meet appellant's burden of proof, the medical evidence of record raises an inference of causal relationship between her condition and her employment duties.⁹

On remand the Office shall request a second opinion from an appropriate specialist with a request to evaluate the evidence and provide a rationalized opinion on the issue of whether appellant's left knee condition was aggravated by her limited employment duties.

The September 15, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside; the case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, DC
September 25, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ *Rebel L. Contrell*, 44 ECAB 660 (1993).