

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of STEPHEN E. FOBERT and DEPARTMENT OF JUSTICE,  
JUSTICE DEPARTMENT, Lampoc, CA

*Docket No. 03-281; Submitted on the Record;  
Issued April 22, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of his federal employment.

On December 11, 2001 appellant, then a 47-year-old personnel specialist, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that on November 28, 2001, while at a training session in South Carolina, he injured his left knee while walking up and down stairs. In a February 22, 2002 letter, appellant indicated that the injury occurred when he turned a corner to proceed to the next flight of stairs, his foot stayed planted in one spot on the carpet while his knee twisted to the left. There was an immediate sharp pain that became worse as the day went on. Appellant also indicated that he had a history of stiff and aching left knee, but he never had pain as he did that day. He did not miss any work due to his knee condition.

In a December 26, 2001 report, Dr. Carl Schlosser, an internist, diagnosed a chondromalacia of the left patella. In a January 7, 2002 report, Dr. Michael G. Gill, an orthopedic surgeon, wrote that appellant ambulates with a minimal antalgic gate favoring the left lower extremity with tenderness beneath the lateral and medial patellar. He diagnosed possible meniscal tear and patella femoral joint arthropathy.

In a February 6, 2002 letter to Dr. Gill, the Office of Workers' Compensation Programs requested more information. In a March 20, 2002 report, Dr. Gill diagnosed patella femoral joint arthropathy, left knee (osteoarthritis left knee). He also wrote that appellant "has had intermittent problems with his left knee for years and has been under the care of Dr. Schlosser intermittently for this problem. The natural history of his underlying disorder is of slow worsening and increased symptomatology in the future. The relationship of the said industrial injury to the overall worsening of this problem is difficult to define. Appellant will require intermittent use of oral anti-inflammatory. He may require future medical and/or surgical treatment."

In a March 22, 2002 decision, the Office denied the claim.<sup>1</sup>

In an April 17, 2002 letter, appellant requested review of the written record by the Branch of Hearings and Review. No new evidence was submitted. In a September 10, 2002 decision, the hearing representative denied appellant's claim finding that the medical evidence did not establish a causal relationship between appellant's medical condition and his employment factors.<sup>2</sup>

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of his federal duties.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> 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.<sup>4</sup> The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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 compensable 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.<sup>5</sup>

In the present case, the medical evidence submitted is insufficient to meet appellant's burden of proof. In his March 20, 2002 report, Dr. Gill indicated that appellant has had a history of injury to his left knee and that the natural history of his underlying disorder is of slow worsening and increased symptomatology in the future. He wrote that the relationship of the industrial injury to the overall worsening of this problem was difficult to define.

Dr. Gill's report lacks medical certainty and is, therefore, speculative and fails to establish the necessary causal relationship between appellant's employment factors and his left knee condition. His report also lacks sufficient supporting rationale in establishing a causal relationship between the alleged incident and appellant's knee condition. Rationale is critical in this case because appellant has a history of knee problems. Absent this explanation and due to

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<sup>1</sup> The Board notes that the Office found this decision premature and later rescinded it.

<sup>2</sup> The Board notes the Office rescinded its March 22, 2002 decision, yet the Branch of Hearings and Review accepted appellant's request for a written review of the record; meaning the first merit decision of the claim was by the Branch of Hearings and Review.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143, 45 (1989).

<sup>5</sup> *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

the speculative nature of Dr. Gill's report, appellant has not met his burden of proof to establish that he sustained an injury in the performance of his federal duties.

The September 10, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
April 22, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member