

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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

*Docket No. 03-816; Submitted on the Record;
Issued August 6, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

This case has twice been on appeal before the Board.¹ On August 11, 1997 appellant, then a 50-year-old pharmacy technician, filed a traumatic injury claim alleging that she injured her left knee in the performance of duty on August 10, 1997. She stated that she stood up and heard a "cracking" sound in her left knee and experienced sharp pain. In a decision dated November 21, 1997, the Office of Workers' Compensation Programs denied appellant's claim as she failed to establish fact of injury. The Office found that appellant failed to demonstrate that the claimed event occurred at the time, place and in the manner alleged. Additionally, the Office found that a medical condition had not been diagnosed in connection with the alleged employment incident.

By decision dated January 7, 2000, the Board affirmed the Office's November 21, 1997 decision denying compensation. The Board found that, while the record demonstrated that the alleged August 10, 1997 employment incident occurred at the time, place and in the manner alleged, the medical evidence failed to establish that appellant's claimed left knee condition was a result of the accepted employment incident. Additionally, the Board found that the medical evidence of record failed to establish that appellant's left knee condition was causally related to any employment factors or conditions.

On September 18, 2000 appellant requested reconsideration and submitted additional medical evidence. The Office reviewed appellant's claim on the merits and denied modification, by decision dated September 22, 2000. On October 17, 2001 the Board issued a decision affirming the Office's September 22, 2000 decision.

¹ Docket No. 98-1473 (issued January 7, 2000) and Docket No. 01-477 (issued October 17, 2001). The Board's prior decisions dated October 17, 2001 and January 7, 2000 are incorporated herein by reference.

Appellant again requested reconsideration on October 4, 2002. Additionally, she submitted a September 20, 2002 report from Dr. Earl S. Rhind, a Board-certified orthopedic surgeon. In brief, he explained that appellant's current left knee problem was the natural progression of an earlier employment-related fall that appellant sustained on April 25, 1995. Dr. Rhind commented that the April 1995 incident was well documented in the record and further stated that an injury resulting in a gradual deterioration, culminating in an abrupt decline, was a well known and commonly experienced, phenomenon.

By decision dated November 12, 2002, the Office denied modification. The Office found that the evidence submitted in support of appellant's request for reconsideration was insufficient to warrant modification.

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on August 10, 1997.

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.² The second component is whether the employment incident caused a personal injury.³

As previously noted, the Board in its January 7, 2000 decision, found that the record demonstrated that the August 10, 1997 employment incident occurred at the time, place and in the manner alleged. The Board also noted that appellant had a diagnosed left knee condition. However, a causal relationship between appellant's left knee condition and the August 10, 1997 employment incident had not been established. The Office's most recent merit decision dated November 12, 2002 found that appellant failed to establish that her claimed left knee condition was causally related to the August 10, 1997 employment incident.

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

³ *John J. Carlone*, 41 ECAB 354 (1989).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by her employment is sufficient to establish a causal relationship.⁴ Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁵

In the instant case, appellant failed to meet her burden of demonstrating that the August 10, 1997 employment incident resulted in an injury. On two prior occasions, the Board reviewed the medical evidence of record and found that appellant failed to establish that she sustained an injury in the performance of duty. The Board need not specifically reiterate its earlier findings as that information is set forth in detail in the prior decisions and is incorporated herein by reference.

Subsequent to the Board's most recent prior decision dated October 17, 2001, appellant submitted a report dated September 20, 2002 from Dr. Rhind. He stated that he last examined appellant on April 20, 2000. Additionally, Dr. Rhind noted that he was asked to review a decision and order dated October 17, 2001, which stated there were no medical records of file that explained appellant's mechanism of injury. He also stated that a decision and order dated January 7, 2000, acknowledged receipt of appellant's November 7, 1997 note indicating "[o]n April 25, 1995 about 3:30 p.m. I tripped on the sidewalk near parking lot 2. I fell hard on both knees and right wrist also[,] I hit my head on the fence in front of me, ever since I fell both knees hurts time after time for several days." Dr. Rhind stated that in both decisions, the reviewing officials either overlooked or ignored documents of record that had been prepared and signed by three professionals on duty that night; a firefighter who responded at the scene, the triage nurse and the treating physician. In his opinion, they all clearly supported appellant's note dated November 7, 1997. Dr. Rhind stated that the evidence of appellant's injury of April 25, 1995, met a basic standard of having multiple witnesses and was clearly documented. He reported that such an injury could and did, set the stage for a progression of knee problems. Additionally, Dr. Rhind stated that the burden of relating the 1995 event to the 1997 incident was thus easily met. He also stated that concluding the injury of 1995 could have no bearing on the 1997 event would not be credible. Dr. Rhind explained that an attempt to divorce the two events, 1995 and 1997, in an attempt to deny significance of the 1995 event, could never meet professional standards. He further explained that an injury resulting in a gradual deterioration, culminating in an abrupt decline, was a well known and commonly experienced, phenomenon.

In his April 12, 2000 report, which was reviewed in the prior appeal, Dr. Rhind reported the circumstances surrounding the injury to appellant's knees in 1995. He indicated that, prior to this fall, appellant did not have any problems with her knees, although she experienced problems

⁴ *Robert G. Morris*, 48 ECAB 238, 239 (1996).

⁵ *See id.* A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized; the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment. *Id.*

with her back. Dr. Rhind 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.” Further he indicated that appellant fell down a ramp, between two buildings at the employing establishment on June 26, 1996 while she was working. Additionally, Dr. Rhind stated that appellant had advanced arthritis in the left knee and suspected similar but less intense degenerative and post-traumatic arthritis of the right knee. He further noted that prior to 1995 appellant had no knee complaints. Dr. Rhind 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.”

The Board finds that the reports of Dr. Rhind are insufficient to establish that the August 10, 1997 employment incident resulted in an injury.

In his September 20, 2002 report, Dr. Rhind repeated his April 12, 2000 description of appellant’s April 25, 1995 accident, wherein she tripped and fell on the sidewalk at work. He also repeated his conclusion from his April 12, 2000 report that, as a result of this incident, appellant sustained knee problems that she did not have prior to this time and to subsequent events, including the August 10, 1997 incident. However, as noted in its prior decision, the Board finds that the April 25, 1995 incident is not before the Board as the record does not establish that the Office accepted this as an employment-related injury.⁶ Therefore, his opinion that because appellant was asymptomatic prior to the 1995 incident and sustained knee problems that led to the August 10, 1997 incident is not probative.⁷ Further, Dr. Rhind did not attempt to explain how his previous 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 in either of these reports. 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.⁸

Finally, in the September 20, 2002 report, Dr. Rhind made several legal arguments including that the evidence of record met the basic legal standard of having multiple witnesses and was clearly documented and referred to the denial as not meeting professional standards. The Board has held that a medical report is of reduced probative value where the physician

⁶ As noted previously, although appellant submitted a date stamped copy of her claim (Form CA-1) for an April 25, 1995 injury, the record does not show that this claim was developed by the Office in the present claim before the Board.

⁷ See *Thomas R. Horsfall*, 48 ECAB 180, 183 (1996) (finding that a physician’s opinion on causal relationship, which is based on the fact that appellant was asymptomatic prior to the work incident and symptomatic afterwards, is of little probative value without supporting rationale).

⁸ 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 upon a complete and accurate factual and medical background. *Connie Johns*, 44 ECAB 560 (1993).

makes a determination of legal standards regarding medical matters presented by the case, which were outside the scope of his expertise.⁹

As the record is devoid of any rationalized medical evidence demonstrating a causal relationship between appellant's claimed left knee condition and the August 10, 1997 employment incident, the Office properly denied compensation.

The November 12, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
August 6, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ *Josephine L. Bass*, 43 ECAB 929 (1992).