

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of GALA D. GOLDSMITH and DEPARTMENT OF AGRICULTURE,  
FOREST SERVICE, Jackson, MS

*Docket No. 03-712; Submitted on the Record;  
Issued May 21, 2003*

---

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained an injury in the performance of duty on May 17, 2000, as alleged; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a).

On May 18, 2000 appellant, then a 43-year-old hydrologist, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on May 17, 2002, when walking in heavy debris, she tripped and fell twice to the ground, thereby sustaining an injury to her left leg and knee. As no supporting documentation was filed at that time, the employing establishment kept the Form CA-1 in appellant's medical folder. In response to a request by appellant in January 2002, the employing establishment filed the Form CA-1 with the Office on June 21, 2002. Meanwhile, on June 12, 2002, appellant filed another notice of traumatic injury and claim for continuation of pay/compensation alleging that on June 5, 2002, she injured herself when an elevator that she was in fell several floors.

By letter dated July 3, 2002, the Office requested that appellant submit further information with regard to her claim for the May 17, 2000 incident.

On August 9, 2002 appellant submitted, in support of her claim, medical reports by Dr. Patrise W. Bennett. These reports indicate that appellant was treated between June 7 and July 30, 2002 for low back pain and pain in her left knee and ankle. Dr. Bennett noted in these reports that appellant's injuries were the result of a "jarring in an elevator." Appellant also submitted physical therapy notes. Appellant further submitted a May 4, 2001 x-ray report by Dr. Linda R. Rockhold, a Board-certified internist, indicating findings compatible with patellofemoral chondromalacia and advanced degenerative joint disease. Appellant also submitted a July 5, 2002 x-ray by a radiologist, whose signature is illegible, indicating that appellant had advanced osteoarthritis in her medial and lateral joint spaces, effusion and patellar chondromalacia. Finally, appellant submitted a list of dates, from December 11, 2000 to

June 12, 2002, wherein she indicated that she saw a chiropractor with regard to her May 2000 and June 2002 work-related injuries.

By decision dated August 12, 2002, the Office denied appellant's claim. The Office noted that, although the initial evidence of file supported the fact that appellant actually experienced the claimed event, the evidence did not establish that a condition had been diagnosed in connection with this.

By letter dated August 29, 2002, appellant requested reconsideration. By decision dated September 12, 2002, the Office denied appellant's request as it found that it was insufficient to warrant review.

The Board finds that the evidence of record fails to support that appellant sustained an injury in the performance of duty on May 17, 2000, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</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>2</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

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 addressed 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.<sup>4</sup> The Office found that appellant had met this criteria. The second component is whether the employment incident caused a person's injury and generally can only be established 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 causal relationship.<sup>5</sup> 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

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>4</sup> *Caroline Thomas*, 51 ECAB 451, 455 (2000).

<sup>5</sup> *Duane B. Harris*, 49 ECAB 170, 173 (1997).

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>6</sup>

In the instant case, the reports by Dr. Bennett indicate that appellant sought treatment from June 7 through July 30, 2002 as a result of a “jarring in an elevator.” Clearly, these reports, commencing two days after appellant’s June 5, 2002 alleged injury, refer to appellant’s alleged injury in the elevator, not the May 17, 2000 injury, which is the issue before this Board. Although appellant alleged that she saw a chiropractor on numerous dates commencing December 11, 2000, she does not submit supporting documentation by her chiropractor indicating a relationship between these treatments and her May 17, 2000 injury. The x-ray interpretations do not address causation. Finally, reports by a physical therapist are of no probative value as a physical therapist is not a physician as defined under the Act and, therefore, is not competent to give a medical opinion.<sup>7</sup>

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 her belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.<sup>8</sup> Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant’s claim for compensation.

The Board further finds that the Office properly refused to reopen appellant’s claim for further review on the merits.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.<sup>9</sup> Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>10</sup> Appellant submitted no further evidence, nor did appellant show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Accordingly, the Office properly denied merit review.

---

<sup>6</sup> *Id.*

<sup>7</sup> *See* 5 U.S.C. § 8101(2); *Jennifer L. Sharp*, 48 ECAB 209 (1996); *Thomas Horsfall*, 48 ECAB 180 (1996).

<sup>8</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>10</sup> 20 C.F.R. § 10.608(b) (1999).

The decisions of the Office of Workers' Compensation Program dated September 12 and August 12, 2002 are hereby affirmed.

Dated, Washington, DC  
May 21, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member