United States Department of Labor
Employees' Compensation Appeals Board

CONSTANCE MAHAR, Appellant	)	
and	)	**Docket No. 04-1120**
	)	**Issued: August 24, 2004**
DEPARTMENT OF THE ARMY, ARMY GARRISON, Fort Drum, NY, Employer	)	

Appearances:
Constance Mahar, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On March 22, 2004 appellant filed an appeal from a January 13, 2004 decision of the Office of Workers' Compensation Programs that denied her claim for a recurrence beginning July 11, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant's medical treatment beginning July 11, 2003 is causally related to her January 29, 2002 employment injury.

FACTUAL HISTORY

On January 30, 2003 appellant, then a 36-year-old motor vehicle operator, filed a claim for compensation for a traumatic injury to her left knee sustained on January 29, 2002 when she slipped off the side of a truck. Appellant submitted a medical report dated March 21, 2002 from Dr. Steven B. Fish, a Board-certified orthopedic surgeon, noting a left knee injury at the end of

January when she fell off a truck, describing her subsequent symptoms and findings on examination and recommending a magnetic resonance imaging (MRI) scan.

The Office accepted appellant's claim for a left knee contusion,[1] and authorized an MRI scan. This diagnostic test was performed on April 9, 2002 and showed a complete tear of the anterior cruciate ligament (ACL) of appellant's left knee. In a May 10, 2002 report, Dr. Fish opined that appellant's ligamentous knee injury was directly related to her January fall at work and requested approval from the Office for ACL reconstruction surgery. In a June 21, 2002 report, Dr. Fish stated that appellant had gradually been making some progress with her left knee but that "It will occasionally give out to the side and this gives a few days of pain following this. She did have one episode of this fairly recently." Dr. Fish noted that appellant had "decided that she would like to go ahead with an ACL brace and then potentially see if she needs surgical intervention sometime in the winter when she is going to have less stress as far as work goes." The Office authorized purchase of a left knee ACL brace.

On July 18, 2003 appellant filed a claim for a recurrence of medical treatment beginning July 11, 2003. Appellant indicated that she had not stopped work, and stated that her leg would "never be correct without the surgery." Her description of the recurrence was that she was cleaning at home and retwisted her knee.

Appellant submitted a July 14, 2003 report from Dr. James C. Vailas who set forth a history of a left ACL deficient knee as a result of an injury two years ago when she fell off a truck at the employing establishment and tore her ACL. Dr. Vailas stated that appellant rehabilitated her knee, though she still needed a brace to work, and was doing fairly well with it until "she jumped out of a truck last week" and felt her knee sublux and had some swelling, for which she was seen at an emergency room on July 11, 2003. Dr. Vailas diagnosed "Left knee chronic ACL deficient knee with medial collateral strain, maybe new meniscal injury, or just some inflamed tissue," and stated that she eventually would have her knee reconstructed.

By decision dated January 13, 2004, the Office found that appellant's alleged recurrence was due to an independent intervening nonwork cause, namely her injury at home while cleaning; the Office denied appellant's "claim for a recurrence of total disability."

LEGAL PRECEDENT

When a claimant with an accepted employment-related condition files a claim for a recurrence of the need for medical treatment, he or she has the burden of establishing that the need for later medical treatment is causally related to the accepted employment injury.[2] The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal

[1] Compensation for temporary total disability was paid from March 18 to May 31, 2002.

[2] Section 8101(5) of the Federal Employees' Compensation Act (5 U.S.C. § 8101(5)) defines "injury" to include "a disease proximately caused by the employment"; *see also Mary A. Ceglia*, 55 ECAB ___ (Docket No. 04-113, issued July 22, 2004).

connection between the condition requiring treatment and the employment injury.[3] The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition and need for treatment is related to the injury.[4]

The Office's regulations define recurrence of medical condition as "a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a 'need for further medical treatment after release from treatment,' nor is an examination without treatment."[5]

ANALYSIS

Appellant has not established that the medical care she received beginning July 11, 2003 is causally related to her January 29, 2002 employment injury.[6] On her claim form for a recurrence of medical treatment, appellant described a twisting injury to her knee at home while cleaning. In contrast, Dr. Vailas described a subluxing injury to her knee during the week before July 14, 2003 after jumping out of a truck. As neither of these incidents occurred at work for the federal government,[7] either one could only be compensable if it constituted a consequential injury rather than an independent nonindustrial cause.[8]

Appellant has the burden to establish that a subsequent injury was a consequence of an employment-related injury.[9] Appellant has not met that burden. The only medical evidence addressing appellant's medical treatment beginning July 11, 2003, Dr. Vailas' July 14, 2003 report, describes appellant's January 29, 2002 employment injury and the condition resulting from that injury but does not indicate that it contributed to her need for medical treatment beginning July 11, 2003.

In finding that appellant did not establish a "recurrence of total disability," the Office's January 13, 2004 decision failed to recognize that appellant was not claiming a recurrence of disability, *i.e.*, a recurrence of inability to work. Although appellant's claim form for a recurrence of medical treatment beginning July 11, 2003 indicates that a purpose of this claim was to obtain authorization for left knee surgery, the Office did not decide whether ACL reconstruction surgery, as recommended by Dr. Fish as early as April 2002, was authorized. As

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[3] *See Mary A. Ceglia*, *supra* note 2.

[4] *Joan R. Donovan*, 54 ECAB ___ (Docket No. 03-297, issued June 13, 2003); *see* 20 C.F.R. § 10.104.

[5] 20 C.F.R. § 10.5(y).

[6] The record indicates appellant's most recent treatment before July 11, 2003 was on June 21, 2002. Her treatment thus cannot be deemed "continuous."

[7] By July 2003 appellant was no longer working for the employing establishment or other federal employers.

[8] *See Sandra Dixon-Mills*, 44 ECAB 882 (1993).

[9] *Theron J. Barham*, 34 ECAB 1070 (1983); *Glyndol N. Henderson*, 31 ECAB 989 (1980).

the Board's jurisdiction is limited to review of final decisions of the Office,[10] the issue of whether such surgery should be or should have been authorized by the Office is not before the Board on appeal.

CONCLUSION

Appellant has not established that the medical care she received beginning July 11, 2003 is causally related to her January 29, 2002 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 13, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[10] 20 C.F.R. § 501.2(c).