

By decision dated March 17, 1999, the Office denied appellant's claim on the grounds that the injury was not sustained in the performance of duty. By decision dated and finalized March 14, 2000, the Office hearing representative remanded the case for further development on the issue of performance of duty.

By decisions dated July 22, 2000 and March 7, 2001, the Office denied appellant's claim on the grounds that she was not in the performance of duty at the time the injury occurred because she was shopping during duty hours in violation of the employing establishment rules.

By decision dated and finalized December 12, 2001, an Office hearing representative found that appellant's incident occurred while in the course of employment. However, she affirmed the Office's denial of appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained a work-related injury on November 25, 1998.

By decisions dated May 31, 2002 and June 10, 2003, the Office denied modification of its prior decisions.

In a report dated April 23, 1998, Dr. Gregory L. Peare, a Board-certified orthopedic surgeon, stated that appellant had experienced left knee pain for the past two years. He provided findings on examination and diagnosed left knee pain with evidence of chondromalacia in the patella. In notes dated September 24, 1998, Dr. Peare stated that appellant was seen for a new problem of pain in the left shoulder with evidence of impingement and rotator cuff tendinitis.

On January 5, 1999 Dr. Peare stated that appellant tripped and fell onto her left knee and shoulder while walking in the employing establishment parking lot. He diagnosed a possible rotator cuff tear. He also noted left knee pain and stated that he was concerned about a possible chondral injury or meniscal tear.

In a report dated December 1, 1999, Dr. Leona M. Martin, appellant's attending Board-certified internist, stated that appellant fell and injured her left shoulder, left knee and aggravated her back in November 1998. She opined that appellant had chronic low back pain aggravated by the fall.

On March 8, 2000 Dr. Peare diagnosed left shoulder pain with impingement and a possible rotator cuff tear, left knee pain with chondromalacia and a possible meniscus tear. In an April 24, 2000 report, Dr. Martin provided findings on examination and diagnosed a medial meniscus tear of the left knee and a partial tear of the rotator cuff of the left shoulder.

Dr. Peare stated in a report dated January 14, 2002 that appellant's left knee chondromalacia was a preexisting condition but the fall on November 24, 1998 could have caused additional damage to the articular cartilage surfaces of the knee. He indicated that appellant's preexisting left shoulder condition was aggravated by the November 24, 1998 fall which caused increased pain and slight weakness.

In a February 2, 2002 report, Dr. Martin stated that beginning in 1995 appellant had experienced back, shoulder and knee pain. She stated, "In review of the chart from 1995 to the

present there is a continuation of the same initial shoulder, knee and back pain that were exacerbated by injury and the repetitive nature of her job.” Dr. Martin noted that appellant’s job entailed stocking groceries onto shelves, lifting and chronic bending and loading boxes onto carts.

In a May 22, 2003 report, Dr. Martin stated:

“In review of [appellant’s] records since her last injury on November 25, 1998 that resulted in injury to her left shoulder and left knee made her unable to return to work. The MRI [magnetic resonance imaging] [scan] that was denied by [the Office] delayed her diagnosis of a rotator cuff tear [and] the proper treatment in a timely fashion was not available to [appellant].... She received surgery for the left knee but has not had surgery for the left shoulder. To this day she still has pain in the left shoulder and has a limited range of motion and an inability to lift objects with her left arm.”

In a May 24, 2003 report, Dr. Martin stated that appellant was examined on April 3, 1996 after falling from a ladder and hitting her head and left shoulder. She noted that as of October 9, 1997 appellant continued to have left shoulder pain and was referred to Dr. Peare. Dr. Martin stated:

“[Appellant again fell on the job [on] November 24, 1998 and aggravated her previous left shoulder injury of 1996. It would seem that the 1996 injury to her left shoulder caused the problem and the November 24, 1998 injury aggravated the left shoulder injury.”

LEGAL PRECEDENT

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

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the “fact of injury” has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.³ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident

¹ 5 U.S.C. §§ 8101-8193.

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

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

caused a personal injury.⁴ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relate to the employment incident. As the Office did not dispute that the November 25, 1998 fall occurred at the time, place and in the manner alleged, and found that appellant was in the course of employment at the time of the incident, the remaining issue is whether the alleged injury was caused by the employment incident.

In order to satisfy his or her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.⁵ An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.⁶ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁷ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.⁸

ANALYSIS

The record indicates that following the employment incident appellant sought treatment on January 5, 1999 and continued to receive treatment from Dr. Peare, a Board-certified orthopedic surgeon, who stated that appellant tripped and fell onto her left knee and shoulder while walking in the employing establishment parking lot. He diagnosed left shoulder pain with impingement, a partial rotator cuff tear, left knee pain with chondromalacia and a medial meniscus tear. However, Dr. Peare did not provide a reasoned opinion on causal relationship between a diagnosed condition and the November 25, 1998 employment incident and did not explain how appellant's preexisting conditions of left shoulder impingement and left knee pain with evidence of chondromalacia, diagnosed in his April 23 and September 24, 1998 reports, were affected by the November 25, 1998 employment incident. Therefore, his reports are of diminished probative value and do not establish that appellant sustained a work-related injury on November 25, 1998.

Dr. Peare stated in a January 14, 2002 report that appellant's left knee chondromalacia was a preexisting condition but the fall in November 1998 could have caused additional damage to his knee cartilage. He indicated that appellant's preexisting left shoulder condition was aggravated by the November 1998 fall. However, his opinion regarding the causal relationship of the 1998 work incident to appellant's knee condition is speculative and he provided an

⁴ *Shirley A. Temple*, 48 ECAB 404 (1997).

⁵ *Gary L. Fowler*, 45 ECAB 365 (1994).

⁶ *William Nimitz, Jr.*, 30 ECAB 567 (1979).

⁷ *Edward E. Olson*, 35 ECAB 1099 (1984).

⁸ *Joseph T. Gulla*, 36 ECAB 516 (1985).

insufficient explanation as to how the 1998 work incident aggravated appellant's preexisting shoulder condition. Therefore, this report is not sufficient to establish a work-related injury on November 25, 1998.

In a report dated December 1, 1999, Dr. Martin, appellant's attending Board-certified internist, opined that appellant had chronic low back pain aggravated by the fall on November 25, 1998. However, she did not address appellant's preexisting left shoulder and left knee conditions or provide a diagnosis of appellant's back condition other than "pain." In a February 2, 2002 report, Dr. Martin stated, "In review of the chart from 1995 to the present there is a continuation of the same initial shoulder, knee and back pain that were exacerbated by injury and the repetitive nature of her job." However, Dr. Martin failed to provide a rationalized medical opinion explaining how appellant's fall in November 1998 aggravated her preexisting conditions. Therefore, these reports are not sufficient to establish that appellant sustained a work-related injury on November 25, 1998.

In a May 24, 2003 report, Dr. Martin stated that appellant was examined on April 3, 1996 after falling from a ladder and hitting her head and left shoulder. She noted that appellant again fell on the job in November 1998 and aggravated her previous left shoulder injury of 1996. Dr. Martin opined that the 1996 injury to her left shoulder caused the problem and the November 1998 injury aggravated her condition. However, Dr. Martin failed to provide sufficient explanation of how the November 25, 1998 work incident caused a worsening of appellant's preexisting 1996 shoulder condition. Therefore, this report is not sufficient to establish that appellant sustained an injury on November 25, 1998 causally related to her fall at work.

CONCLUSION

Appellant failed to provide sufficient rationalized medical evidence establishing that she sustained an injury causally related to her fall at work on November 25, 1998. Accordingly, the Office properly denied her claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 10, 2003 is affirmed.

Issued: February 5, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member