

**United States Department of Labor  
Employees' Compensation Appeals Board**

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NANCY J. ZIOLKOWSKI, Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
VETERANS ADMINISTRATION MEDICAL )  
CENTER, Milwaukee, WI, Employer )

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**Docket No. 04-774  
Issued: July 14, 2004**

*Appearances:*  
Nancy J. Ziolkowski, *pro se*  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member

**JURISDICTION**

On January 30, 2004 appellant filed a timely appeal from the February 20 and December 1, 2003 merit decisions of the Office of Workers' Compensation Programs, which denied her claim that she sustained an injury in the performance of duty on July 16, 2002. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has merit jurisdiction to review both these decisions.

**ISSUE**

The issue is whether appellant sustained an injury in the performance of duty on July 16, 2002 as alleged.

**FACTUAL HISTORY**

On July 16, 2002 appellant, then a 57-year-old sales clerk, filed a claim alleging that she sustained an injury at work that day when a box fell from a shelf and struck her knee, which became swollen, puffy and discolored. She did not stop work.

The Office received a December 4, 2002 report from Dr. Paul Sienkiewicz, a Board-certified orthopedic surgeon and consultant to appellant's attending surgeon. Appellant described to him a work injury in which a box fell on her knee and which was followed by chronic right knee pain, particularly on stairs. Dr. Sienkiewicz diagnosed benign enchondroma, right proximal tibia and stated: "As for the source of her pain, I would suspect either an occult articular cartilage injury or perhaps referred pain from the lumbar spine where she has had chronic problems in the past."

On December 10, 2002 appellant underwent a right knee arthroscopy, partial medial meniscectomy and debridement of the tibial plateau. On December 12, 2002 Dr. Stephen L. Nord, appellant's attending orthopedic surgeon, requested authorization for the surgery. He noted the date of injury as July 16, 2002 and diagnosed torn cartilage, right knee. To the question "How is the condition related to the employee's work injury?" he answered: "July 2002 -- dropped a box while at work on her knee." Explaining the rationale for surgery, he noted that conservative treatment was attempted for five months with anti-inflammatory medication.

On January 13, 2003 the Office asked appellant to submit, within 30 days, a detailed narrative report from her attending physician, including among other things, an opinion on the relationship of the diagnosed conditions to her federal employment activity. The Office received a November 21, 2002 report from Dr. Nord, who noted the following history: "[Appellant] was injured at work when she was lifting boxes. She had a large box fall on her right thigh area. [Appellant] has had persistent pain since that time." Dr. Nord diagnosed chronic anterior cruciate ligament tear and osteoarthritis patella. On February 11, 2003 appellant advised the Office that she was having difficulty obtaining the medical opinion evidence requested.

In a decision dated February 20, 2003, the Office denied appellant's claim for compensation on the grounds that the medical evidence was insufficient to establish that her condition was caused by the event. The Office observed that there was no definitive medical opinion to support that her current condition was caused by the claimed work incident.<sup>1</sup>

Appellant requested an oral hearing before an Office hearing representative. On March 20, 2003 Dr. Nord reported that osteoarthritis in the lateral compartment of the right knee at the articular surface "was probably aggravated by injury at work." In a narrative report dated March 27, 2003, he stated the following:

"I have been treating [appellant] for injuries incurred following fall of boxes onto [her] right knee. Injury date July 16, 2002. [She] has had persistent right anterolateral knee pain. [Appellant] underwent arthroscopic surgery, which demonstrated degeneration of the lateral tibial plateau with chondromalacia present. It was felt to be a work-related injury."

Dr. Nord noted that appellant also had findings of a small fraying of the anterior horn of the medial meniscus. He reported that the tumor of the right proximal tibia was not work related and did not appear to be a cause of her current symptoms. To a reasonable degree of medical

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<sup>1</sup> The Office made no explicit finding that the incident occurred as alleged.

probability, he stated that appellant had a five percent impairment to the right knee related to the injury of July 16, 2002.

At the hearing, which was held on October 21, 2003 appellant appeared and testified as to the incident that took place on July 16, 2002. She described her complaints, her subsequent actions and her medical treatment.

In a decision dated December 1, 2003, the Office hearing representative affirmed the denial of appellant's claim. She found that the evidence of record established that a box fell onto appellant's right knee at work on July 16, 2002; however, there was no contemporaneous medical documentation of injury from that incident. The Office hearing representative noted that appellant did not seek medical treatment for four months and in the interim continued to perform her regular duties. The hearing representative found that Dr. Nord provided no medical rationale to support his opinion on causal relationship.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.<sup>3</sup>

Causal relationship is a medical issue<sup>4</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>5</sup> must be one of reasonable medical certainty<sup>6</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>7</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>5</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>6</sup> See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>7</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

## ANALYSIS

The Office accepts that a box fell onto appellant's right knee at work on July 16, 2002. She has established that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The question for determination is whether this event or incident caused an injury.

The record in this case, lacks the rationalized medical opinion evidence necessary to establish causal relationship. On December 4, 2002 Dr. Sienkiewicz, the consulting orthopedist, report the history of injury as appellant described it, but expressed no opinion on whether her condition was related to the box that fell on July 16, 2002. On December 12, 2002 Dr. Nord, the attending orthopedist, indicated that the torn cartilage in appellant's right knee was related to the July 16, 2002 incident, but he did not explain medically how the incident caused such a medical condition. On March 20, 2003 Dr. Nord reported that osteoarthritis in the lateral compartment of the right knee at the articular surface "was probably aggravated by injury at work." He further stated that degeneration of the lateral tibial plateau with chondromalacia was felt to be a work-related injury, but he again offered no medical discussion to explain how the falling box caused or aggravated the osteoarthritis or degeneration reported.

The medical opinion evidence submitted in this case is supportive of appellant's claim, inasmuch as it asserts a relationship between torn cartilage, osteoarthritis or degeneration and the incident that occurred at work on July 16, 2002 when a box fell onto appellant's right knee. The element of causal relationship, however, requires more than an affirmative medical conclusion.<sup>8</sup> Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning. It is not necessary that the evidence be so conclusive as to suggest a causal connection beyond all possible doubt; the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical.<sup>9</sup> Because Dr. Nord did not explain on what medical or orthopedic basis he was able to conclude that the box which fell onto appellant's knee on July 16, 2002 tore the cartilage in her right knee or aggravated her osteoarthritis or degeneration, his opinion on causal relationship is of little probative value and is insufficient to discharge appellant's burden of proof.<sup>10</sup>

## CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on July 16, 2002 as alleged.

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<sup>8</sup> See, e.g., *Lillian M. Jones*, 34 ECAB 379 (1982) (physician's opinion on causal relationship, consisting only of checking "yes" to a form question, had little probative value to establish causal relationship).

<sup>9</sup> *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein at note 1.

<sup>10</sup> The mere fact that appellant had persistent pain since that time is insufficient to establish causal relationship. *Thomas D. Petrylak*, 39 ECAB 276 (1987) (when a physician concludes that a condition is causally related to an employment because the employee was asymptomatic before the employment injury, the opinion is insufficient without supporting medical rationale to establish causal relationship).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 1 and February 20, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 14, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member