

down steps. She asserted that she did not slip and fall and that she was using the handrail at the time. Appellant stopped work on September 5, 2002 and worked intermittently until her return to full duty on December 27, 2002.¹

Appellant submitted office notes from her physician, Dr. Jose Nazar, a Board-certified orthopedic surgeon, dated September 11 and 25, 2002, in which he discussed his evaluation of appellant's right knee pain. In the September 11, 2002 report, Dr. Nazar indicated that appellant delivered mail and that she felt pain and discomfort while going up and down stairs. He noted that his physical examination of appellant and x-rays of the area were unremarkable. In the September 25, 2002 report, Dr. Nazar indicated that appellant presented for a follow-up examination and reported having only been able to work for two days once released to full duty due to a recurrence of symptoms and swelling.² Appellant submitted a radiology report which indicated that a magnetic resonance imaging (MRI) scan was performed on September 26, 2002 of the right knee which suggested a horizontal tear of the anterior horn of the lateral meniscus, moderately large joint effusion and mild to moderate osteoarthritis. In a report dated October 9, 2002, Dr. Nazar related again that appellant had an injury at work while going down a flight of steps and twisted her knee, which began with pain and discomfort. He confirmed the MRI scan findings that appellant had a medial meniscus tear of the right knee and recommended arthroscopic surgery.

On November 19, 2002 the Office advised appellant that the information submitted with the claim was insufficient and requested additional information including a physician's opinion as to how the claimed injury resulted in the condition diagnosed.

Appellant thereafter submitted additional documentation including several duty status reports (Form CA-17) dated from September 5 to October 9, 2002 which indicated that she felt pain in her right knee at work while descending stairs on September 5, 2002 and diagnosed right knee pain and meniscal tear evidenced by MRI scan. Each form report indicated that appellant's condition "was caused or aggravated by an employment activity" without any explanation. Appellant further submitted an operative report outlining her arthroscopic surgery performed on November 27, 2002 and a December 4, 2002 report from Dr. Nazar which discussed appellant's postoperative condition. In the December 4, 2002 report, Dr. Nazar stated that "[appellant] while working, delivering the mail, twisted her knee on several occasions while going up and down steps which probably created the injury as described before the tear of the posterior horn of the medial meniscus." Appellant further submitted a Form CA-7 claim for wage loss from November 27 through December 12, 2002, duplicative medical reports and a medical slip from Dr. Nazar releasing her to full duty on December 23, 2002.

¹ Appellant underwent arthroscopic surgery on her right knee on November 27, 2002. The record reflects that appellant had two prior knee injuries accepted for right knee sprains in 1992 and 1995 (file numbers 030180878 and 030208789) and two prior cervical injuries accepted for displacement cervical intervertebral disc in 1997 and 2001 (file numbers 030233565 and 032004081). Each of the prior cases have been closed and retired with the exception of the 2001 cervical injury. Appellant sustained a recurrence of that injury on January 1, 2003 and is receiving wage-loss compensation as she has not returned to work.

² On September 30, 2002 appellant filed a recurrence of disability alleging that after working for four hours on September 19, 2002 her knee became worse and was aggravated in the performance of duty.

By decision dated December 17, 2002, the Office denied the claim on the basis that the evidence was insufficient to support that appellant's right knee condition was causally related to her employment on September 5, 2002.

In a letter dated December 23, 2002, appellant requested a review of the written record and submitted duplicative medical evidence. By decision dated April 18, 2003, an Office hearing representative affirmed the prior decision. The Office hearing representative accepted that appellant experienced the employment incident of September 5, 2002; however, he found that the record failed to reflect medical evidence in which a physician displayed knowledge of the incident, provided a definitive diagnosis of the condition and an unequivocal opinion regarding causal relationship between the accepted employment incident and the diagnosed condition.

In a letter dated May 25, 2003, appellant requested reconsideration. She submitted an attending physician's report (Form CA-20) from Dr. Nazar dated November 20, 2002 which related that on September 5, 2002 appellant "felt crushing and pain in the right knee while going down steps delivering mail" and diagnosed a right knee tear shown by MRI scan. He checked yes on the form report indicating his belief that the diagnosed condition was caused or aggravated by employment factors and reiterated that appellant was injured descending steps while delivering mail. Appellant argued with her request that her physician revised his December 4, 2002 narrative statement from that originally submitted, which contained an additional notation of "revised May 7, 2003" below Dr. Nazar's signature block and the date "September 5, 2003" in the body of the text. The revised report restated Dr. Nazar's opinion that "[appellant], while working, delivering the mail, ... twisted her knee on September 5, 2003 while going up and down steps which probably created the injury as described before the tear of the posterior horn of the medial meniscus."

By merit decision dated August 19, 2003, the Office denied modification of its prior decision on the grounds that the request was insufficient to warrant modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing that he or she sustained an injury while in the performance of duty.⁴ 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 considered in conjunction with one another. The first component to be established is that the employee actually experienced the

³ 5 U.S.C. §§ 8101-8193.

⁴ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁵

The medical evidence required to establish a causal relationship, generally, is medical opinion evidence,⁶ of reasonable medical certainty,⁷ supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸ An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's belief of causal relation unsupported by the medical record.⁹

ANALYSIS

In this case, appellant has not submitted rationalized medical evidence addressing whether her right knee condition was caused by the September 5, 2002 employment incident. None of the medical reports submitted by appellant contain an opinion supported by medical rationale linking appellant's condition to her employment. Dr. Nazar, in his report dated October 9, 2002, related the history of the accepted work incident and indicated that appellant's knee pain and discomfort had been corroborated with an MRI scan, which showed the presence of a tear of the medial meniscus. However, he did not provide any opinion relating it to the work incident. Dr. Nazar, in his duty status and attending physician reports of record, diagnosed right meniscal tear and checked "yes" to questions on causal relation of appellant's injury sustained while descending steps to her right knee condition. The Board notes, however, that Dr. Nazar supported his causal relationship opinion only by checking a box that appellant's condition was work related. However, the Board has held that such a report has little probative value where there is no explanation or rationale supporting the opinion on causal relationship between the diagnosed condition and the employment-related injury.¹⁰ Therefore, such reports have diminished probative value.

Dr. Nazar's December 4, 2002 narrative report, which was resubmitted in revised form dated May 7, 2003 provided an opinion on the issue of causal relationship between appellant's right knee tear and the September 5, 2002 work incident. The report in both forms indicated that appellant, while working, delivering mail twisted her knee while going up and down steps which he opined probably created the tear of the posterior horn of the medial meniscus. Dr. Nazar, however, does not clearly explain how the September 5, 2002 work incident caused the diagnosed condition and he couched his opinion in speculative terms. As such, these reports are

⁵ See *John J. Carlone*, 41 ECAB 354, 357 (1989).

⁶ *Naomi Lilly*, 10 ECAB 560, 572-73 (1959).

⁷ *Morris Scanlon*, 11 ECAB 384-85 (1960).

⁸ *William E. Enright*, 31 ECAB 426, 430 (1980).

⁹ *Ausberto Guzman*, 25 ECAB 362 (1974).

¹⁰ See *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

of reduced probative value.¹¹ The Board finds that since appellant did not submit sufficient medical evidence relating her diagnosed right knee condition to the accepted employment incidents on September 5, 2002, she did not meet her burden of proof in this case.

CONCLUSION

The Board finds that the Office properly determined that appellant failed to meet her burden of proof to establish that she sustained a right knee injury on September 5, 2002 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the August 19 and April 18, 2003 and December 17, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 3, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹¹ The Board has held that speculative opinions are of diminished probative value and are insufficient to establish a claim. See *Philip J. Deroo*, 39 ECAB 1294 (1988) (although the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal); *Jennifer Beville*, 33 ECAB 1970 (1982) (statement of a Board-certified internist that the employee's complaints "could have been" related to her work injury was speculative and of limited probative value).