

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

LESSIE M. MCKINNEY, Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Gainesville, FL Employer**

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**Docket No. 04-548
Issued: May 26, 2004**

Appearances:
Lessie M. McKinney, pro se
Office of Solicitor, for the Director

Case submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 22, 2003 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated September 19, 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 on appeal is whether appellant has established that her left medial and meniscus tears were causally related to her February 7, 2002 employment injury.

FACTUAL HISTORY

This is the second appeal in this case. The Board issued a decision¹ on May 6, 2003 in which it affirmed an August 29, 2002 decision in part, and set aside the decision in part, and remanded the case to the Office for further development of the medical evidence. The Board

¹ Docket No. 03-63.

found that the Office met its burden of proof in terminating appellant's compensation effective August 29, 2002 for the accepted left knee contusion. The Board, however, determined that there remained an outstanding issue as to whether her left medial or lateral meniscus tears were causally related to the February 7, 2002 employment injury and that the Office needed to further develop the medical evidence. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

On remand the Office referred appellant to Dr. V.G. Raghavan, a Board-certified orthopedic surgeon, for a second opinion examination to obtain information about the extent and degree, if any, of her remaining injury-related disability. The Office requested that Dr. Raghavan determine with objective findings whether appellant's work-related knee contusion had resolved and indicate what objective findings showed that her current condition was a result of the accepted February 7, 2002 work factors. The Office further noted:

"Considering [appellant] returned to work in her date-of-injury position on February 8, 2002 and worked that position without difficulty until her annual leave beginning April 1, 2002; is it more medically probable that the work-related condition has resolved and her current condition is due to her underlying degenerative condition rather than the work injury? Please explain fully how her current condition is related to the work injury when the medical documentation prior to her vac[a]tion [sic] indicates the work injury resolved." Please provide objective findings in support of your opinion."

In a report dated August 26, 2003, Dr. Raghavan reviewed the statement of accepted facts, appellant's history and his examination findings. He stated:

"Based on my examination of August 26, 2003, it is my medical opinion that the work-related condition of the left knee contusion has resolved. I do not see any residuals at the present time. "Based on my examination of August 26, 2003, it is my medical opinion that [appellant's] current condition in the left knee is not due to the work-related left knee condition. Review of the records state that she made a complete recovery and was released back to her regular work by Dr. Ferris on March 7, 2002. "It is also my medical opinion that [appellant] has evidence of tricompartmental osteoarthritis in the left knee which preexisted the injury for which she had treatment by Dr. Bush as well as Dr. Indelicato, who did arthroscopic surgery of the left knee, which is not part of the allowed claim. "It is my opinion that the current condition is due to underlying degenerative disc disease and not due to the left knee contusion."

By decision dated September 19, 2003, the Office issued a *de novo* decision finding that the probative medical report of Dr. Raghavan established that the work-related injury of the left knee contusion had resolved with no continuing residuals and that her current medical condition was not causally related to the February 7, 2002 work injury.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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.³ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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 compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be 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.⁴

ANALYSIS

The Board previously found in its decision issued May 6, 2003, that the medical evidence raised an inference in the record that appellant's work-related injury on February 7, 2002 caused in addition to the left knee contusion, a tear in her medial and lateral meniscus of the left knee. On remand the Office was charged with developing the medical evidence further and issuing a *de novo* decision regarding whether such tears were causally related to the February 7, 2002 employment injury. The Office referred appellant to Dr. Raghavan and asked him a series of questions; however, the Office only inquired as to whether appellant's work-related knee contusion had resolved and whether her current condition was a result of the accepted February 7, 2002 work factors. The Office did not request Dr. Raghavan's medical opinion as to whether the diagnosed medial or meniscus tears were causally related to the February 7, 2002 employment injury as directed on remand. He responded to the Office questions in his report dated August 26, 2003, that appellant's current condition in the knee was not due to the work-related left knee contusion. Dr. Raghavan reasoned that the left knee contusion had resolved, that he did not see any residuals of that injury on examination and appellant was released to work on March 7, 2002. He concluded that appellant's current condition was due to underlying degenerative disc disease and not due to the left knee contusion.

The Board finds that since the August 26, 2003 report from Dr. Raghavan does not address whether there was a causal relationship between the diagnosed medial and meniscus tears and the February 7, 2002 employment injury, the case will be remanded to the Office for a proper referral on this outstanding issue.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

CONCLUSION

The Board finds that this case is not in posture for a decision on the issue of whether appellant's left medial and lateral meniscus tears were causally related to accepted work factors of February 7, 2002.

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for further development, followed by an appropriate decision on the issue of whether the left medial and meniscus tears were causally related to appellant's work-related injury on February 7, 2002.

Issued: May 26, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member