

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

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<b>LIDIA A. VASQUEZ, Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 04-1425</b>
	)	<b>Issued: October 29, 2004</b>
<b>DEPARTMENT OF THE ARMY, MEDICAL COMMAND, FORT SAM HOUSTON, TX, Employer</b>	)	
	)	

*Appearances:*  
*Lidia A. Vasquez, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
 DAVID S. GERSON, Alternate Member  
 WILLIE T.C. THOMAS, Alternate Member  
 MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On May 5, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated April 5 and February 12, 2004, finding that she did not sustain a recurrence of disability on or after November 29, 2002 due to her June 9, 2000 employment injury. 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 has met her burden of proof in establishing that she sustained a recurrence of disability on or after November 29, 2002 due to her June 9, 2000 employment injury.

**FACTUAL HISTORY**

On June 9, 2000 appellant, then a 45-year-old health systems specialist, filed a traumatic injury claim alleging on that date she slipped and fell in the performance of duty, injuring her left

hand, right leg, hip, side and back as well as her right ankle. Appellant did not stop work. She submitted a narrative statement noting that she injured her left knee when she landed in a “split” position with her right leg in front and her left leg behind her. Appellant also submitted emergency room notes dated June 9, 2000, describing her fall and diagnosing right hip contusion. On November 20, 2000 a magnetic resonance imaging (MRI) scan report demonstrated a tear in the medial meniscus in the left knee and chondromalacia in the right knee. Appellant underwent arthroscopic surgery on January 5, 2001 for medial meniscal tear and articular cartilage lesion in the left knee. She returned to work following the surgery on January 24, 2001.

The Office requested additional factual and medical information on December 21, 2000. Appellant submitted additional medical evidence, including MRI scans of both her right and left knees demonstrating meniscal tears in both knees.

By decision dated January 26, 2001, the Office initially denied appellant’s claim on the grounds that she had not established that she sustained an injury in the performance of duty, as alleged.

Appellant requested reconsideration on February 8, 2001. In a report dated April 5, 2001, Dr. Anthony E. Johnson, an ophthalmologist and employing establishment physician, stated that appellant’s surgery was the result of her June 2000 fall.

On October 25, 2001 the Office accepted that appellant sustained a tear in the medial meniscus of her left knee and authorized arthroscopic surgery and x-rays. She requested a schedule award on November 9, 2001. The Office requested additional medical evidence on December 3, 2001. In a report dated December 28, 2001, Dr. Robert C. Lowry, a surgeon, examined appellant and noted that she continued to experience pain in both knees despite her surgery. He reviewed the operative report and appellant’s preoperative MRI scan. Dr. Lowry found clear evidence of persistent collateral ligament injury on both knees as well as meniscal disruption to both knees. He recommended a new MRI scan of both knees and found that appellant had not reached maximum medical improvement.

In a letter dated March 4, 2002, the Office informed appellant that as she had not reached maximum medical improvement, she was not entitled to a schedule award.

Appellant submitted a letter dated October 6, 2003 and requested that the Office “open” her claim. She stated that she required additional medical treatment of her injured knee. Appellant stated that her knee pain had worsened and that she required immediate medical attention.

Appellant submitted a form report dated October 29, 2003 from Dr. Lowry noting that she had continued complaints of knee pain dating from June 9, 2000. He made findings on examination including significant pronation of both ankles with some internal rotation of her knees and mildly tender medial cruciate ligaments. Dr. Lowry diagnosed meniscal tear of both knees and degenerative damage to cartilage in both knees. He completed a form report on December 9, 2003 and indicated with a checkmark “yes” that appellant’s bilateral meniscal tears were due to her employment-related fall.

On December 14, 2003 appellant filed a notice of recurrence and alleged that on November 29, 2002 she sustained a recurrence of her June 9, 2000 condition. She stated that she continued to experience persistent irritation and pain in both knees which she attributed to her employment injury. She missed no time from work.

The Office requested that appellant submit additional factual and medical evidence in a letter dated December 30, 2003. Dr. Lowry completed a report on January 19, 2004 and described appellant's June 9, 2000 employment injury. He noted her continued complaints of bilateral knee pain and concluded, "It is clear that [appellant] continued to experience problems related to the injury of June 9, 2000." Dr. Lowry diagnosed continued complications from the bilateral meniscal tears, degenerative changes to the cartilage of both knees, bilateral sacroiliac joint sprain and bilateral pronation of the ankles. He concluded that appellant's left knee surgery was unsuccessful, that her problems continued and her altered gait affected her sacroiliac joints and possibly her ankles.

The Office denied appellant's claim by decision dated February 12, 2004, finding that the medical evidence was not sufficient to establish a causal relationship between her current diagnoses and her accepted employment injury of June 9, 2000.

Dr. Lowry completed a report on February 24, 2004 and opined that appellant's current conditions were in fact due to her June 9, 2000 employment injury. He stated, "It was stated in the report that in my opinion [appellant] has had a gradual worsening of her symptoms over the past couple of years with associated degenerative changes and altered gait. These degenerative changes are referring to the changes that have occurred as a result of the injury and the failed knee surgery." Dr. Lowry noted that appellant continued to have pain since her surgery and that she denied any additional trauma. He stated, "Considering the fact that [appellant's] pain never resolved after the surgery and she had no problems with her knees prior to the injury of June 9, 2000, I do not understand how one could not relate her current complaints to the work injury.... In my medical opinion, the recurrence of November 29, 2002 is causally related to the injury of June 9, 2000."

Appellant requested reconsideration on February 25, 2004. By decision dated April 5, 2004, the Office denied modification of the February 12, 2004 decision, finding that the record did not contain the necessary bridging medical evidence to establish appellant's claim.

### **LEGAL PRECEDENT**

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. The burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concluded that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician's conclusion.<sup>1</sup> The weight of the medical evidence is determined by its reliability, its

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<sup>1</sup> *Ricky S. Storms*, 52 ECAB 349 351-52 (2001).

probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>2</sup>

### ANALYSIS

Appellant fell on June 9, 2000 and alleged that she injured her left knee when she landed in a "split" position with her right leg in front and her left leg behind her. An MRI scan on November 20, 2000 demonstrated meniscal tears and other injuries in both knees. Appellant underwent surgery on her left knee on January 5, 2001. The Office accepted her claim for a tear of the medial meniscus of the left knee and authorized the surgery on October 25, 2001. Appellant then sought a schedule award, but her physician, Dr. Lowry, a surgeon, found on December 28, 2001 that she had not reached maximum medical improvement based on his examination which revealed persistent collateral ligament injuries as well as meniscal disruption in both knees.

Appellant did not seek further medical treatment until October 29, 2003. At that point Dr. Lowry opined that her knees were chronically painful and that she had developed a chronic knee condition. In a December 9, 2003 form report, he indicated with a checkmark "yes" that appellant's bilateral meniscal tears were due to her employment injury. Dr. Lowry completed a report on January 19, 2004 describing appellant's June 9, 2000 employment injury and noting her continued complaints of bilateral knee pain. He concluded that appellant continued to experience problems related to the injury of June 9, 2000. Dr. Lowry diagnosed continued complications from the bilateral meniscal tears, degenerative changes to the cartilage of both knees, bilateral sacroiliac joint sprain and bilateral pronation of the ankles. He concluded that appellant's left knee surgery was unsuccessful, that her problems continued and her altered gait affected her sacroiliac joints and possibly her ankles.

Dr. Lowry did not provide any detailed medical reasoning in his January 19, 2004 narrative report supporting his finding that appellant's condition continued to be related to her accepted employment injury or that the unaccepted right knee condition was in fact due to the fall on June 9, 2000. He merely noted that appellant asserted that she had continued knee pain and did not explain why he felt that her conditions were related to her employment. Regarding the December 9, 2003 form report, the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such a report is not sufficient to establish causal relationship.<sup>3</sup> Neither of these reports are sufficiently rationalized to meet appellant's burden of proof.

In his February 24, 2004 report, Dr. Lowry opined that appellant's current conditions were in fact due to her June 9, 2000 employment injury. He opined that she demonstrated degenerative changes and altered gait as a result of the injury and the failed knee surgery. Dr. Lowry noted that appellant continued to have pain since her surgery and that she denied any

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<sup>2</sup> *James Mack*, 43 ECAB 321, 328-29 (1991).

<sup>3</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

additional trauma. He opined that her current conditions were due to her employment injury. Dr. Lowry's only offered reasons for his opinion were that appellant's pain never resolved after the surgery and she had no problems with her knees prior to the injury of June 9, 2000. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is not sufficient without supporting rationale, to establish causal relation.<sup>4</sup> Dr. Lowry did not provide any additional medical reasoning to support his opinion. Furthermore, the causal relationship between appellant's right knee condition and her employment injury has never been established.<sup>5</sup> She did not describe her fall as including direct trauma to her right knee, nor did she list her right knee as an injured member when describing her employment injury. Given the length in time between appellant's employment injury in June 2000 and her diagnosis of knee injuries on November 20, 2000, the Board is not persuaded that the right knee condition was due to her employment injury, nor that her current left knee conditions are related to her accepted employment injuries and surgery.

### **CONCLUSION**

The Board finds that appellant had failed to submit the necessary rationalized medical opinion evidence to establish a causal relationship between her currently diagnosed conditions and her accepted employment injury, consisting of a medial meniscal tear of the left knee and resulting arthroscopic surgery. Therefore, she has failed to meet her burden of proof in establishing a recurrence of disability on or after November 29, 2002 causally related to the June 9, 2000 employment injury.

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<sup>4</sup> *Kimper Lee*, 45 ECAB 565, 574 (1994).

<sup>5</sup> As the Board has held, appellant has the burden of proof in establishing that conditions not accepted by the Office are causally related to the employment. See *Charlene R. Herrera*, 44 ECAB 361, 370 (1993).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 5 and February 12, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 29, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member