

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

SHIRLEY JAYNES, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Toledo, OH, Employer**

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**Docket No. 04-1756
Issued: October 12, 2004**

Appearances:
Shirley Jaynes, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On July 6, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' April 15, 2004 merit decision. Under 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 bilateral osteoarthritis knee condition in the performance of duty.

FACTUAL HISTORY

Appellant, a 55-year-old window clerk, filed a Form CA-2 claim for benefits on January 23, 2004 alleging that on January 15, 2002 she became aware that she had a degenerative condition in her right and left knees which she contributed to factors of her employment.

In a report dated March 30, 2002, Dr. Gregory M. Georgiadis, a Board-certified orthopedic surgeon, stated that appellant had complaints of pain in her right knee which she

attributed to lifting heavy objects at work. He noted that a magnetic resonance imaging (MRI) scan showed some medial joint line narrowing and degenerative changes in the medial compartment, as well as in the patellofemoral joint. Dr. Georgiadis advised that the lateral compartment showed very mild arthritis and that the patellofemoral joint appeared to have osteoarthritis. He diagnosed right knee osteoarthritis versus osteonecrosis of the medial compartment.

In a report dated November 7, 2002, Dr. Georgiadis reiterated his previous findings and conclusions. In a May 18, 2003 report, the physician indicated that appellant had bilateral knee pain which had been relatively constant and was possibly getting worse. Dr. Georgiadis stated that appellant had received cortisone injections and physical therapy, which had failed to provide her with any relief from her symptoms. Physical examination revealed a free range of motion with flexion and extension. Dr. Georgiadis diagnosed severe degenerative joint disease of the knees, bilaterally.

Appellant also submitted several form reports from a physical therapist at the Heartland Rehabilitation Services dated January through March 2002.

By letter dated February 23, 2004, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition and an opinion as to whether her claimed conditions were causally related to her federal employment. Appellant did not submit any additional medical evidence.

By decision dated April 15, 2004, the Office denied appellant's claim, finding that she failed to submit sufficient medical evidence to establish that she sustained a bilateral osteoarthritis knee condition in the performance of duty.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that 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 These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical 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 implicated 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

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed bilateral osteoarthritis knee condition and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁵

ANALYSIS

The Board finds that appellant has failed to submit any medical report containing a rationalized, probative opinion which relates her claimed bilateral osteoarthritis knee condition to factors of her employment. For this reason, she has not discharged her burden of proof to establish her claim that this condition was sustained in the performance of duty.

Appellant submitted reports from Dr. Georgiadis, who related findings of bilateral knee pain on examination and diagnosed bilateral osteoarthritis. However, the physician did not provide a rationalized medical opinion that the claimed knee condition or disability was causally related to employment factors. In his March 30, 2002 report, Dr. Georgiadis stated that the results of an MRI scan and x-ray indicated some medial joint line narrowing and some degenerative changes in the medial compartment and the patellofemoral joint. Dr. Georgiadis concluded that appellant had very mild arthritis in the lateral compartment and osteoarthritis in the patellofemoral joint of the right knee. On May 18, 2003 Dr. Georgiadis advised that appellant had bilateral knee pain which had been relatively constant and was possibly getting worse. He noted that cortisone injections and physical therapy failed to give appellant any relief from her symptoms. Dr. Georgiadis' reports, however, are of limited probative value as they do not contain any medical rationale explaining how or why appellant's bilateral osteoarthritis knee condition was caused or aggravated by factors of her employment.⁶ Dr. Georgiadis did not offer

⁴ *Id.*

⁵ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁶ *William C. Thomas*, 45 ECAB 591 (1994).

any explanation of appellant's employment activities or offer as to how these activities would have caused or contributed to her bilateral knee condition. The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁷ Dr. Georgiadis did not sufficiently describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed condition. His reports, the only evidence appellant submitted in support of her claim, thus, did not constitute sufficient medical evidence to establish that appellant's claimed bilateral osteoarthritis knee condition was causally related to her employment.

While appellant also submitted physical therapy notes to the record, the Board has long held that a physical therapist is not a "physician" under the Act and, therefore, the opinions expressed by the therapist are not considered probative medical evidence.⁸

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

The Office advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Consequently, she has not met her burden of proof in establishing that her claimed bilateral osteoarthritis knee condition was causally related to her employment. The Board, therefore, affirms the Office's April 15, 2004 decision denying benefits for appellant's claimed bilateral osteoarthritis knee condition.¹⁰

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establish that her claimed bilateral osteoarthritis knee condition was sustained in the performance of duty.

⁷ See *Anna C. Leanza*, 48 ECAB 115 (1996).

⁸ *Linda Blue*, 50 ECAB 227 (1999).

⁹ *Id.*

¹⁰ On appeal appellant has submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision. See *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501(c).

ORDER

IT IS HEREBY ORDERED THAT the April 15, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 12, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member