



On July 26, 2002 appellant filed a notice of recurrence of disability alleging that he had continued to experience pain and swelling in his right knee since the January 13, 1999 employment injury. Appellant stated that his knee condition varied depending on how much standing, walking or stair climbing was required in the performance of his federal duties.

In a letter dated September 9, 2002, the Office informed appellant that he appeared to be attributing his current right knee condition to the additional employment duties of standing, walking and stair climbing. The Office found that as such appellant's claim should be developed as a new occupational disease claim rather than a claim for recurrence of disability. The Office requested additional factual and medical evidence in support of appellant's claim.

On November 10, 2002 appellant responded and stated that his current position required excessive climbing of stairs, walking, standing, bending and stooping. He stated that the more walking and stair climbing he performed the worse his knee felt.

In a report dated November 25, 2002, Dr. Donald W. Ames, a Board-certified orthopedic surgeon, noted appellant's history of falling twice on January 13, 1999 and recommended knee surgery.

By decision dated December 3, 2002, the Office denied appellant's claim finding that he failed to submit the necessary medical opinion evidence to establish a relationship between his claimed factors of employment and his knee condition.

Appellant requested an oral hearing by letter postmarked January 3, 2003. By decision dated February 28, 2003, the Branch of Hearings and Review denied appellant's request as untimely.<sup>1</sup>

On March 30, 2003 appellant requested reconsideration of the Office's December 3, 2002 decision and submitted additional evidence from Dr. Ames. In an addendum to his November 25, 2002 report, Dr. Ames stated: "In my opinion based on the information provided by patient history all of his symptoms stem from his fall of January 13, 1999 ... on the sidewalk."

By decision dated April 10, 2003, the Office denied modification of its prior decision noting that appellant's claim had been administratively changed from a recurrence of disability to an occupational disease. The Office stated that Dr. Ames' report was insufficient to meet appellant's burden of proof as it did not mention the alleged employment duties which appellant felt caused or contributed to his current knee condition.

Appellant requested reconsideration on March 22, 2004 and submitted a report from Dr. Ames dated January 5, 2004. He stated that appellant's symptoms dated from the original work injury on January 13, 1999. He noted that the continued need for walking including stairs seemed to aggravate the right knee problem. Dr. Ames diagnosed medial compartment arthritis and stated that this condition seemed to be aggravated by appellant's activities at work. He stated: "It would seem that his previous problems with the right knee were exacerbated from his

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<sup>1</sup> As this decision was issued more than one year prior to the date of appellant's appeal to the Board on April 28, 2004, the Board lacks jurisdiction to review this decision on appeal. 20 C.F.R. § 501.3(d)(2).

injury of slipping on the ice on January 13, 1999 but that he did have a history of problems prior to that including surgery and an x-ray at the time of his emergency room visit, which was reported on the emergency room note as showing degenerative joint disease.”

By decision dated March 30, 2004, the Office denied modification of its April 10, 2003 decision, finding that appellant had not established a causal relationship between his disabling condition and factors of his federal employment. The Office explained that Dr. Ames’ report was not sufficiently rationalized to establish a causal relationship between appellant’s employment duties of climbing stairs and the aggravation of his right knee medial compartment arthritis.

### **LEGAL PRECEDENT**

The Office’s regulation define a recurrence of disability as “an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”<sup>2</sup>

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 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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.<sup>3</sup>

### **ANALYSIS**

In this case, appellant filed a claim for a traumatic injury on January 13, 1999 which the Office accepted as a right knee strain. Appellant then alleged that he had continuing right knee pain and swelling which he attributed to his January 13, 1999 employment injury. However, appellant also noted that his knee symptoms worsened with walking and standing in the performance of his federal job duties. He stated that his position required excessive stair climbing, walking, standing, bending and stooping. Appellant stated that his employment duties had prevented his knee from healing and that his knee condition had worsened. As appellant has not attributed his current knee condition to “a spontaneous change in a medical condition” but instead to duties of his federal employment such as climbing stairs, walking, standing, bending and stooping, the Office properly found that appellant’s claim should be developed as an occupational disease rather than a recurrence of disability.<sup>4</sup>

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<sup>2</sup> 20 C.F.R. § 10.5(x).

<sup>3</sup> *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

<sup>4</sup> *Stephen N. Zanowic*, Docket No. 04-10 (issued February 13, 2004).

In support of his claim, appellant submitted several reports from Dr. Ames, a Board-certified orthopedic surgeon. He initially opined that appellant's symptoms stemmed from his fall of January 13, 1999. Dr. Ames did not indicate that he was aware of appellant's employment duties and did not offer any opinion as to the impact these duties might have had on appellant's knee condition. Furthermore, he did not provide any medical reasoning explaining why he felt that appellant's initial employment injury was solely responsible for his current condition. As this report lacked a history of injury and medical rationale, it was insufficient to establish either a spontaneous recurrence of disability or a claim for occupational disease.

On January 5, 2004 Dr. Ames stated that appellant's symptoms dated from the original work injury on January 13, 1999. He noted that the continued need for walking including stairs seemed to aggravate the right knee problem. Dr. Ames diagnosed medial compartment arthritis and stated that this condition seemed to be aggravated by appellant's activities at work. He stated: "It would seem that his previous problems with the right knee were exacerbated from his injury of slipping on the ice on January 13, 1999, but that he did have a history of problems prior to that including surgery and an x-ray at the time of his emergency room visit, which was reported on the emergency room note as showing degenerative joint disease." This report contradicts Dr. Ames' earlier report, stating that appellant had a preexisting knee condition prior to the January 13, 1999 fall. Although Dr. Ames did opine that appellant's employment duties of walking and climbing stairs aggravated his medial compartment arthritis, he did not offer any medical reasoning for his opinion and did not explain whether these employment duties temporarily aggravated the symptoms of appellant's diagnosed condition or had permanently aggravated the underlying condition. As Dr. Ames' report is not supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant, it is insufficient to meet appellant's burden of proof.

### **CONCLUSION**

The Board finds that appellant has not submitted sufficient rationalized medical opinion evidence to establish a causal relationship between his accepted employment duties and his diagnosed condition and therefore has failed to establish a claim for an occupational disease.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 30, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 17, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member