United States Department of Labor
Employees' Compensation Appeals Board

NORMA L. BRADLEY, Appellant	)	
and	)	**Docket No. 04-2103**
	)	**Issued: February 2, 2005**
SOCIAL SECURITY ADMINISTRATION, Chicago, IL, Employer	)	

Appearances:
Norma L. Bradley, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On August 26, 2004 appellant filed a timely appeal of the March 3, 2004 merit decision of the Office of Workers' Compensation Programs, which denied her claim for an employment-related traumatic injury. Appellant also timely appealed the Office's May 18, 2004 nonmerit decision denying reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant's claimed medical condition is causally related to her August 2, 2002 employment exposure; and (2) whether the Office properly denied appellant's request for a review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 22, 2002 appellant, then a 59-year-old technical expert, filed a traumatic injury claim for pain, stiffness and swelling all over her body. She alleged that on August 2, 2002 her entire body began to ache due to extreme cold air blowing on her at her workstation.

Appellant stated that her face, neck, back, hands, knees, legs and feet became stiff and her left knee began to swell and became very painful. She stopped working on August 8, 2002.

On August 9, 2002 appellant was treated for left knee pain and swelling at the University of Chicago Medical Center. Dr. Claudette M. Macklin, an internist, examined appellant on August 16, 2002 and diagnosed osteoarthritis. Appellant was also treated in the emergency room on August 18, 2002 for left knee problems. Dr. Richard J. Lopez, a Board-certified internist, diagnosed degenerative arthritis. Appellant returned to work on August 21, 2002, however, she stopped work again on September 10, 2002.

On November 26, 2002 the Office requested additional factual and medical evidence. The Office subsequently received treatment records from Dr. Basel I. Al-Aswad, a Board-certified orthopedic surgeon. The records covered the period January 10 to September 24, 2001. Appellant had a prior history of degenerative joint disease of both knees. She underwent arthroscopic surgery for her left knee in 1993 and Dr. Al-Aswad performed a right knee partial meniscectomy on July 24, 2001. The records also included bilateral knee x-rays dated June 1, 1998 and February 5, 2001 and a June 30, 2001 right knee magnetic resonance imaging scan, which revealed degenerative changes.

Dr. Holly J. Benjamin, a Board-certified physician specializing in sports medicine, first examined appellant on September 18, 2002 for bilateral leg and knee pain. She reported a prior history of arthroscopic surgery on both knees and a recent onset of symptoms in August 2002, when appellant had increasing knee pain and swelling. Dr. Benjamin indicated that, when the weather changes, especially with cold weather, appellant's knees tend to flare. She also reported that appellant had "giving out" episodes. Dr. Benjamin stated that on August 2, 2002 appellant's knee swelled greatly in the absence of trauma and since then appellant reported a profound feeling of weakness in her legs and she had a couple of falls. On physical examination of the lower extremities, she reported trace joint effusion on the right, 1+ joint effusion on the left and bilateral crepitus. Dr. Benjamin noted diffuse tenderness throughout the knee joint, full extension as well as adequate flexion and no gross instability. Additionally, September 18, 2002 bilateral knee x-rays revealed tri-compartmental degenerative joint disease.

In a November 1, 2002 attending physician's report (Form CA-20), Dr. Benjamin diagnosed osteoarthritis. Although the report listed the date of injury as August 2, 2002, she noted a history of knee pain from April 2002. With respect to causal relationship, Dr. Benjamin stated that walking, lifting and using stairs at work aggravated appellant's condition. She also remarked that appellant had an unsteady gait, was at risk for falls, and was a candidate for knee replacements. Dr. Benjamin authored a similar report on December 6, 2002.

In a December 9, 2002 statement, appellant indicated that she had surgery on her right knee in July 2001 and was doing fine afterwards. She further stated that she believed that sitting and working in the blowing cold air agitated her condition.

By decision dated December 26, 2002, the Office denied appellant's claim on the basis that she failed to establish that her claimed medical condition was causally related to the August 2, 2002 employment exposure.

Appellant requested an oral hearing, which was held on July 8, 2003. Appellant submitted additional medical evidence, including August 18, 2002 emergency room treatment records, Dr. Benjamin's October 10, 2002 treatment notes, and two additional narrative reports from Dr. Benjamin dated January 7 and July 10, 2003.

The August 18, 2002 emergency room triage notes indicated that appellant complained of left knee pain and "'giving out,'" with swelling for the past several days. She received a diagnosis of degenerative arthritis.

Dr. Benjamin's October 10, 2002 treatment notes indicated that appellant had returned for follow-up of her knee arthritis. She also reported that the injections she administered on appellant's September 18, 2002 visit were helping. Appellant was also noted to be in physical therapy and doing well, although currently off work and anticipating filing for disability. Dr. Benjamin diagnosed bilateral osteoarthritis.

In a January 7, 2003 report, Dr. Benjamin explained that appellant was currently being treated for osteoarthritis and was susceptible to multiple environmental factors such as cold air, which causes increased pain and stiffness and limited mobility. She also noted that exposure to extremely warm air causes swelling and inflammation with pain. Dr. Benjamin also stated that appellant's condition put her at an increased risk for falling and required restrictions of limited walking, no stairs and no lifting.

Dr. Benjamin stated in her July 10, 2003 report that she was treating appellant for knee osteoarthritis, which required ongoing care. Dr. Benjamin also stated that activities such as sitting for long periods of time in cold air and lifting, kneeling or taking stairs can exacerbate or worsen appellant's condition.

By decision dated August 20, 2003, the hearing representative affirmed the Office's December 26, 2002 decision.

Appellant requested reconsideration on December 3, 2003. She submitted October 22, 2003 x-rays that revealed severe osteoarthritis affecting bilateral knees, slightly greater on the right than on the left. Appellant also submitted a November 14, 2003 report from Dr. Benjamin, who noted that when she saw appellant in September 2002, appellant reported experiencing "severe knee pain and swelling in August due to cold air blowing on her at work." Dr. Benjamin stated that it was her expert opinion that "the cold air blowing on [appellant] would satisfactorily explain the exacerbation of knee osteoarthritis [she] treated [appellant] for in September of 2002."

In a decision dated March 3, 2004, the Office denied modification of the prior decisions.

Appellant again requested reconsideration on April 12, 2004. She did not submit any additional evidence with her request. The Office denied reconsideration by decision dated May 18, 2004.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which he claims compensation is causally related to the employment injury.[2]

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[3] The second component is whether the employment incident caused a personal injury.[4]

ANALYSIS -- ISSUE 1

Appellant claims that cold air blowing on her at work on August 2, 2002 aggravated her preexisting bilateral knee osteoarthritis. While the record supports that appellant was exposed to cold air while at work on August 2, 2002, the medical evidence is insufficient to establish that appellant's employment exposure exacerbated her preexisting medical condition. An award of compensation may not be based on surmise, conjecture or speculation. The fact that appellant's condition became apparent during a period of employment or the belief that the condition was caused, precipitated or aggravated by her employment is insufficient to establish a causal relationship.[5]

None of the initial medical records for treatment appellant received on August 9, 16 and 18, 2002 make reference to appellant's exposure to cold air while at work on August 2, 2002. The August 18, 2002 emergency room triage notes reported complaints of left knee pain and "giving out," with swelling for the past several days. The emergency room records also note appellant's two prior knee surgeries, but there is no mention of appellant's August 2, 2002 exposure to cold air at work. Similarly, when Dr. Benjamin initially examined appellant on September 18, 2002, her treatment records did not mention appellant's exposure to

[1] 5 U.S.C. § 8101 *et seq.*

[2] 20 C.F.R. § 10.115(e) (1999); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

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

[4] *John J. Carlone*, 41 ECAB 354 (1989).

[5] *Robert G. Morris*, *supra* note 2.

cold air on August 2, 2002 as a possible causative factor for her complaints. Her only reference to August 2, 2002 was that a "flare" occurred on that date "when [appellant's] knee swelled greatly in the absence of trauma." Dr. Benjamin's October 10, 2002 treatment notes also do not mention appellant's August 2, 2002 employment exposure as a contributing factor to her bilateral knee osteoarthritis. Additionally, her November 1 and December 6, 2002 attending physician's reports note an onset of symptoms in April 2002 and Dr. Benjamin further stated that walking, lifting and using the stairs at work aggravated appellant's condition. Again, Dr. Benjamin made no mention of appellant's exposure to cold air at work on August 2, 2002 as a causative factor.

It her January 7, 2003 report, Dr. Benjamin mentioned exposure to cold air as a possible contributing factor to appellant's bilateral knee osteoarthritis. At that time, she stated that appellant was susceptible to multiple environmental factors such as cold air, which caused increased pain and stiffness and limited mobility. She also noted that exposure to extremely warm air causes swelling and inflammation with pain. However, Dr. Benjamin did not mention any specific exposure on August 2, 2002, but merely that appellant was susceptible to changing environmental conditions. In her July 10, 2003 report, Dr. Benjamin elaborated slightly, noting that activities such as sitting for long periods of time in cold air and lifting, kneeling or taking stairs can exacerbate or worsen appellant's condition. Again, she did not specifically identify appellant's August 2, 2002 employment exposure as a cause or contributing factor. In Dr. Benjamin's latest report dated November 14, 2003, she stated that it was her expert opinion that "the cold air blowing on [appellant]" would satisfactorily explain the exacerbation of her knee osteoarthritis.[6]

As previously discussed, the relevant medical evidence covering the period August to December 2002 does not specifically address the alleged causal relationship between appellant's bilateral knee osteoarthritis and her August 2, 2002 employment exposure. In fact, Dr. Benjamin's November 1 and December 6, 2002 reports suggest that appellant's current condition predated the August 2, 2002 employment incident by approximately four months. Consequently, this evidence does not establish that appellant's claimed bilateral knee condition is related to her August 2, 2002 employment exposure.

Dr. Benjamin's January 7, July 10 and November 14, 2003 reports are also insufficient to establish a causal relationship between appellant's claimed condition and her accepted employment exposure on August 2, 2002. The January 7 and July 10, 2003 reports merely allude to exposure to cold air as a possible causative factor. Dr. Benjamin stated that appellant was susceptible to multiple environmental factors and that sitting for long periods of time in cold air can exacerbate or worsen appellant's condition, however, neither report specifically attributed appellant's condition to her exposure at work on August 2, 2002.

Although Dr. Benjamin recently stated that she believed that "the cold air blowing on [appellant] would satisfactorily explain the exacerbation of knee osteoarthritis," she did not provide a satisfactory explanation for her November 14, 2003 opinion on causal relationship. Additionally, Dr. Benjamin's report is of questionable validity because she purports to have been aware from the outset of appellant's history of experiencing "severe knee pain and swelling in

[6] At that time, Dr. Benjamin was privy to the fact that the employing establishment acknowledged that appellant's workstation was situated underneath an air vent that had been blowing cold air.

August due to cold air blowing on her at work." Appellant reportedly stated as much to Dr. Benjamin at their initial consultation in September 2002. However, this history of injury is nowhere reflected in any of Dr. Benjamin's reports prior to November 14, 2003.[7] As indicated, Dr. Benjamin provided an apparently contradictory history in her November 1 and December 6, 2002 reports.

Because Dr. Benjamin failed to provide sufficient medical rationale for her opinion on causal relationship and she appears to have relied on an incomplete and conflicting factual background, the Board finds her November 14, 2003 report insufficient to meet appellant's burden of proof.[8] Accordingly, the Office properly found that appellant failed to establish that her claimed bilateral knee condition was causally related to her August 2, 2002 employment exposure.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act, the Office has the discretion to reopen a case for review on the merits.[9] Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.[10] Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[11]

ANALYSIS -- ISSUE 2

Appellant's April 12, 2004 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).[12] Appellant also failed to satisfy the third requirement under section 10.606(b)(2). She did not submit any relevant and pertinent new evidence not previously considered by the Office and, therefore, appellant is not entitled to a review of the merits of her claim based on the third requirement under section

[7] Her September 18, 2002 treatment notes merely indicated that "[w]hen the weather changes, especially with cold weather, the knees tend to flare."

[8] *Victor J. Woodhams*, *supra* note 2.

[9] 5 U.S.C. § 8128(a).

[10] 20 C.F.R. § 10.606(b)(2) (1999).

[11] 20 C.F.R. § 10.608(b) (1999).

[12] 20 C.F.R. §§ 10.606(b)(2)(i) and (ii) (1999).

10.606(b)(2).[13] Because appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Office properly denied the April 12, 2004 request for reconsideration.

CONCLUSION

The Board finds that appellant failed to establish that her claimed bilateral knee condition was causally related to her August 2, 2002 employment exposure. The Board also finds that the Office properly denied appellant's April 12, 2004 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the May 18 and March 3, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 2, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[13] 20 C.F.R. § 10.606(b)(2)(iii) (1999).