United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 08-424**
	)	**Issued: June 17, 2008**
DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, Boise, ID, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 23, 2007 appellant filed a timely appeal from the September 14, 2007 merit decision of the Office of Workers' Compensation Programs denying her claim for a recurrence of a medical condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of her medical condition, on or subsequent to April 5, 2007, that was causally related to her accepted injury.

FACTUAL HISTORY

On February 10, 2003 appellant, a 49-year-old firefighter, filed a traumatic injury claim alleging that she injured her left knee and back when she slipped and fell on wet pavement in an employee parking lot on February 2, 2003. Her claim was accepted for a left medial meniscus tear and subsequent partial meniscectomy. On August 15, 2003 appellant's treating physician,

Dr. Field T. Blevins, a Board-certified orthopedic surgeon, released appellant to return to work full duty.

In a report dated February 25, 2004, Dr. Blevins stated that appellant was doing quite well and that she was experiencing no symptoms whatsoever in her left knee. The record contains prescriptions for physical therapy signed by Dr. Blevins and numerous physical therapy notes for the period March 24, 2003 through August 15, 2004.

On April 6, 2007 appellant filed a recurrence of her accepted condition. She stated that she had been "fine" until the day before, when she experienced a sharp pain in her left knee while biking/walking to get into shape for the "pack test." Appellant did not stop working and indicated that she sought medical treatment only.

Appellant submitted an April 6, 2007 report from Dr. Blevins, who described her condition as "post left knee partial meniscectomy." Dr. Blevins indicated that appellant had been doing well, with lots of skiing and firefighting, until two weeks before, when she experienced a "searing type of pain" in the patella region while "cycling uphill, pushing hard." On examination, he found her calves to be nontender and no evidence of effusion. There was no medial pain with the patellar grind test. There was tenderness over the pes tendons and some mild tenderness over the lateral epicondyle. Dr. Blevins stated that she "may have bruised the patella or perhaps injured the chondral surface; however, she does not have swelling or mechanical symptoms and most of her findings on examination today center around tenderness at the pes tendon area a little bit over the iliotibial bend."

On May 9, 2007 Dr. Blevins related appellant's complaints of severe pain in her left knee, especially when walking uphill. His examination revealed range of motion of 0 to 125 degrees, with negative effusion and negative grind. Dr. Blevins diagnosed patellofemoral pain, left knee. On May 22, 2007 he found mild tenderness under the lateral aspect of the patella and stated that a recent magnetic resonance imaging (MRI) scan revealed no significant abnormalities. On June 12, 2007 Dr. Blevins noted a gradual improvement in patellofemoral pain.

Appellant submitted notes signed by Ellen Tomsie, a physical therapist. On May 16, 2007 Ms. Tomsie indicated that appellant had a sudden onset of searing knee pain while riding a bike during a training session last Spring. On June 18, 2007 she noted appellant's progress in the left knee condition.

In a letter dated June 21, 2007, the Office informed appellant that the information submitted was insufficient to establish that her current condition was causally related to the accepted left knee injury. The Office advised her to submit a physician's narrative report with a diagnosis and a rationalized opinion explaining how her current condition was related to the original February 2, 2003 injury.

Appellant submitted a position description for a supervisory range/forestry technician. She submitted physical therapy notes from Ms. Tomsie for the period June 8 through 25, 2007. Appellant also submitted a May 18, 2007 report of an MRI scan of the left knee. The report revealed findings of a prior meniscal surgery and identified only a small amount of meniscal tear.

In a July 2, 2007 report, Dr. Blevins indicated that appellant was capable of performing her regular duties. He opined that "based upon appellant's history, the current pain likely originated at the time of the original February 3, 2003 injury." Dr. Blevins further stated that the "recurrence of symptoms of anterior knee pain is very likely related to the original injury." On July 3, 2007 he diagnosed anterior left knee pain. Dr. Blevins stated, "[a]ppellant relates her symptoms to the injury in 2003."

In a July 13, 2007 statement, appellant indicated that her physical condition was good until April 5, 2007, when she engaged in training for the arduous "pack test." The test, which is a requirement of her employment position, involves carrying 45 pounds for three miles in 45 minutes. Appellant stated, "I know this is a recurrence of disability because I have never had knee trouble until my original injury."

By decision dated September 14, 2007, the Office denied appellant's recurrence claim, on the grounds that the medical evidence was insufficient to show that her current medical condition was due to the accepted work injury.

LEGAL PRECEDENT

Appellant has the burden of establishing that she sustained a recurrence of a medical condition[1] that is causally related to her accepted employment injury. To meet her burden, appellant must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.[2] Where no such rationale is present, the medical evidence is of diminished probative value.[3]

The Office's procedure manual provides that, after 90 days of release from medical care (based on the physician's statement or instruction to return as needed or computed by the claims examiner from the date of last examination), a claimant is responsible for submitting an

[1] "Recurrence of medical condition" means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment. 20 C.F.R. § 10.5(y) (2002).

[2] *Ronald A. Eldridge*, 53 ECAB 218 (2001).

[3] *Mary A. Ceglia*, 55 ECAB 626 (2004); *Albert C. Brown*, 52 ECAB 152 (2000).

attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury.[4]

ANALYSIS

Appellant has not met her burden of proof to establish that she sustained a recurrence of a medical condition on or subsequent to April 5, 2007. The Office accepted appellant's February 10, 2003 traumatic injury claim for left medial meniscus tear and subsequent left knee partial meniscectomy. Appellant has alleged that, on April 5, 2007, she experienced an onset of searing knee pain while riding a bike during a training session. However, she has failed to produce any rationalized medical opinion evidence establishing that she required further medical treatment for a continuing employment-related condition.

On February 25, 2004 Dr. Blevins reported that appellant was doing quite well and that she was experiencing no symptoms whatsoever in her left knee. The record contains prescriptions for physical therapy signed by Dr. Blevins and numerous physical therapy notes for the period March 24, 2003 through August 15, 2004. There is no evidence of record establishing that appellant received medical treatment for her accepted condition between August 15, 2004 and April 6, 2007, when she was again examined by Dr. Blevins. As computed from the date of the last physical therapy session on August 15, 2004, the treatment on April 6, 2007 was rendered more than 90 days after appellant's release from medical care. Therefore, appellant was responsible for submitting an attending physician's report containing a description of the objective findings and supporting causal relationship between her current condition and the previously accepted work injury.[5] She had the burden of submitting sufficient medical evidence to document the need for further medical treatment.[6] Appellant did not submit the evidence required and thus failed to establish a need for continuing medical treatment.[7]

Dr. Blevins' reports do not establish that appellant's current knee condition was causally related to the accepted employment injury. On April 6, 2007 he stated that appellant had been doing well, with lots of skiing and firefighting, until two weeks before, when she experienced a "searing type of pain" in the patella region while "cycling uphill, pushing hard." Dr. Blevins provided examination findings and stated that appellant "may have bruised the patella or perhaps injured the chondral surface." His report is speculative and fails to provide a definitive diagnosis. Moreover, it does not contain an opinion that appellant's current condition was

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[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003). The procedure manual provides, with certain exceptions, that, within 90 days of release from medical care (as stated by the physician or computed from the date of last examination or the physician's instruction to return PRN), a claims examiner may accept the attending physician's statement supporting causal relationship between appellant's current condition and the accepted condition, even if the statement contains no rationale. *Id*., at Chapter 2.1500.5(a).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (September 2003).

[6] 20 C.F.R. § 10.5(y).

[7] *See J.F.*, 58 ECAB ___ (Docket No. 06-186, issued October 17, 2006).

related to the original February 2, 2003 injury. Rather, it implies that appellant may have sustained a new injury while cycling. For these reasons, the report is of limited probative value.

In reports dated May 9 and 22 and June 12, 2007, Dr. Blevins related appellant's complaints of severe pain in her left knee and diagnosed patellofemoral pain, left knee. However, none of these reports contained an opinion as to the cause of her condition. They are, therefore, of diminished probative value.[8]

On July 2, 2007 Dr. Blevins indicated that appellant was capable of performing her regular duties. He opined that "based upon appellant's history, the current pain likely originated at the time of the original February 3, 2003 injury." Dr. Blevins further stated that the "recurrence of symptoms of anterior knee pain is very likely related to the original injury." His report is speculative and unsupported by rationalized medical evidence explaining the nature of the relationship between appellant's knee condition and the accepted injury.[9] Therefore, it, too, is of diminished probative value. On July 3, 2007 Dr. Blevins noted appellant's contention that her symptoms were related to the injury in 2003. He did not express his own opinion, but rather merely reported appellant's belief that her current knee pain was related to the accepted injury. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there was a causal relationship between her claimed condition and her employment.[10]

Appellant submitted physical therapy notes from Ms. Tomsie. Physical therapists do not qualify as "physicians" under the Federal Employees' Compensation Act. Therefore, their opinions are of no probative value.[11] Reports of MRIs scan and x-rays, which do not contain an opinion as to the cause of appellant's condition, are of diminished probative value and are insufficient to establish appellant's claim.[12]

The Board finds that the evidence submitted was insufficient to establish that appellant sustained a recurrence of a medical condition and the Office properly denied her claim.

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[8] *See Mary E. Marshall*, 56 ECAB 420, 427 (2005).

[9] While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant. *See Thomas A. Faber*, 50 ECAB 566 (1999); *Samuel Senkow*, 50 ECAB 370 (1999).

[10] *Patricia J. Glenn*, 53 ECAB 159 (2001).

[11] Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."

[12] *See Mary E. Marshall*, *supra* note 8.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of a medical condition that was causally related to her accepted injury.

ORDER

IT IS HEREBY ORDERED THAT the September 14, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 17, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board