

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

C.R., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Detroit, MI, Employer)

**Docket No. 09-225
Issued: August 17, 2009**

Appearances:

Steve Burt, for the appellant

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 October 30, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 15, 2008 that denied her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained a left knee condition in the performance of duty.

FACTUAL HISTORY

On July 7, 2007 appellant, then a 51-year-old retired letter carrier, filed an occupational disease claim alleging that she sustained a left knee condition at work. She alleged that she aggravated an accepted left knee condition due to walking and stair climbing while working. Appellant indicated that she first became aware of the injury and its relation to her work on February 24, 2003. She also alleged that her knee gradually worsened from 2003 to 2006.

Appellant stated that she last carried mail on June 23, 2006. She indicated that her left hip was replaced on November 24, 2006 and that her left knee was now in need of surgery. Appellant retired on disability effective January 22, 2007.¹

In a May 15, 2007 statement, appellant indicated that her injury began on February 24, 2003, when she tore a meniscus tear in her left knee when she slipped and fell down icy stairs in the performance of duty. She alleged that her left knee was “still a source of significant pain and disability” and would “require surgery.” Appellant also alleged that her left hip began to have problems and was replaced on November 24, 2006.

Appellant submitted medical evidence with her claim. In a March 21, 2006 treatment note, Dr. Raimonds Zvirbulis, a Board-certified orthopedic surgeon, noted that she had a long history of left leg pain and arthritic knee pain over the previous six years. He advised that appellant’s history of injury included a “slip downstairs a year ago, another injury about three years ago.” Dr. Zvirbulis noted findings of minimal effusion and mild medial joint-line tenderness in the left knee. He found essentially no internal or external rotation of the left hip. X-rays revealed severe bone-on-bone arthritic changes. Dr. Zvirbulis opined that “the majority of [appellant’s] leg symptoms are due to the severe osteoarthritis of the left hip.” He recommended permanent restrictions on unnecessary climbing, walking or standing and advised that appellant was a candidate for a total hip replacement. In a July 26, 2006 report, Dr. Amitha V. Koppam, a Board-certified internist, diagnosed left hip osteoarthritis, double vision, back pain from sciatica and left knee pain and opined that appellant was unable to perform her duties as a letter carrier. She opined that appellant was totally disabled from March 8 to 12, 2006, due to the pain.

Appellant also submitted reports from Dr. Veena Cham, a Board-certified internist. In an April 26, 2006 treatment note, Dr. Cham noted that appellant was seen for low back pain, left hip pain, and left knee pain. She recommended strengthening, and stretching exercises for the left hip and lumbar stabilization exercises. On June 6, 2006 Dr. Cham related that appellant had hip and back pain. She noted that a “couple of years ago, [appellant] had a fall, she has back pain since then.” Dr. Cham advised that diagnostic testing revealed severe arthritis and opined that appellant could not work with severe arthritis. On May 30, 2007 she stated that appellant had a history of a left knee injury from a fall on February 24, 2004. Dr. Cham noted that appellant had a fall in October 2005 at which time the left knee began to hurt again. She advised that appellant had pain in the left hip. Dr. Cham noted that appellant’s duties as a letter carrier included lots of walking and going up and down stairs. She indicated that appellant was unable to work or walk and advised that she initially used a cane due to arthritis of the knee. Dr. Cham advised that the injury was aggravated by the fall, which resulted in the eventual need for surgery to the left knee.

¹ The record reflects that appellant filed six claims from 2001 through 2006. Claim numbers xxxxxx866 and xxxxxx226, were no time loss cases. Claim numbers xxxxxx382 and xxxxxx846 were duplicate cases with a date of injury of February 24, 2003 that were denied. The Office accepted a left knee strain under claim number xxxxxx555. It also accepted left knee contusion, left shoulder sprain and left neck sprain under claim number xxxxxx448. Appellant also had a nonwork-related injury on January 21, 2006, in which she seriously injured her left hip and had complications requiring surgery on November 24, 2006. These other claims are not presently before the Board.

In a letter dated July 13, 2007, the employing establishment controverted the claim. Andrea Porter, a health and human resource management specialist, indicated that appellant had an identical claim under File No. xxxxxx382, which was denied on December 13, 2005.

In a letter dated July 25, 2007, the Office requested additional factual and medical evidence from appellant. In an August 1, 2007 response, appellant alleged that she was claiming an aggravation of her February 24, 2003 injury. She alleged that, by June 2006, she was in “too much discomfort to perform city carrier delivery work and had alternate sitting/standing duties. The [employing establishment] told me to stay home after that.” Appellant stated that she retired on disability on January 22, 2007 due to the knee and hip problems. She indicated that she wished to claim wage loss since June 3, 2006 and that she wanted the Office to cover her future knee surgery.

In an October 11, 2007 report, Dr. Cham indicated that appellant had arthritis. She also noted appellant’s history of injury and treatment, which included severe osteoarthritis of the left hip for which left hip replacement surgery was performed on November 24, 2006. Dr. Cham indicated that appellant was presently having pain in the left knee. She advised that appellant associated “this to the wear and tear from walking and stair climbing while bearing the weight of the mail satchel that she experienced while delivering mail in the years prior to her retirement.” Dr. Cham diagnosed osteoarthritis of the left knee joint and opined that appellant’s current activity levels were “contributing further aggravation to this joint, even though she has been retired since January 22, 2007.”

By decision dated October 19, 2007, the Office denied appellant’s claim finding that she failed to submit the necessary medical evidence in support of her claim.

Appellant requested a telephone hearing, which was held on February 12, 2008. In a letter dated March 6, 2008, her representative indicated that he was providing additional medical evidence from Dr. Cham. However, the additional report was not received by the Office.

By decision dated June 3, 2008, the Office hearing representative affirmed the Office’s October 19, 2007 decision.

In a letter dated July 11, 2008, appellant’s representative requested reconsideration and submitted additional evidence. In a March 6, 2008 report, Dr. Cham noted that appellant injured her left knee on July 28, 2001, while delivering the mail. She explained that appellant had an undersurface tear of the posterior horn of the lateral meniscus and a subchondrial cyst involving the lateral tibial plateau posteriorly, which improved with physical therapy. Dr. Cham also noted that appellant had a subsequent injury to the left knee while at work on February 24, 2003 when she slipped while going down stairs while delivering mail. She noted that appellant improved but that she had pain in the left knee and left hip. Dr. Cham advised that, at that time, appellant was diagnosed with severe osteoarthritis of the left hip and a tear of the posterior horn of the lateral meniscus. She noted appellant’s November 24, 2006 left hip replacement surgery and advised that she was “again having throbbing pain and swelling of the left knee.” Dr. Cham related that she associated this with “wear and tear from walking and stair climbing while bearing the weight of the mail satchel that [appellant] experienced while delivering the mail in the years prior to her retirement.” She diagnosed left knee osteoarthritis and tear of the posterior

horn of the lateral meniscus. Dr. Cham indicated that appellant's "current activity levels [were] contributing to further aggravation to this joint, even though [she] has been retired since January 22, 2007." She opined that she could "state with reasonable medical certainty that [appellant's] occupational activities, including the walking and stair climbing while carrying a weighted mail satchel did contribute significantly to the worsening of the left knee condition of tricompartmental arthritic changes and tear of the posterior horn of the lateral meniscus."

By decision dated September 15, 2008, the Office denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing 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.³ 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.⁴

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 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, generally, is rationalized medical opinion 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.⁵

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

ANALYSIS

Appellant alleged that her left knee condition was caused by an aggravation of a left knee torn meniscus as a result of having to walk and climb stairs since February 24, 2003. It is not disputed that she walked and climbed stairs as part of her job. The Office denied the claim finding that appellant had not submitted sufficient medical evidence to establish that her left knee condition was caused or aggravated by walking and climbing steps at work or any other specific factors of her federal employment.

In support of her claim, appellant submitted several medical reports from Dr. Cham. In reports dated April 26 and June 6, 2006, Dr. Cham did not specifically address whether her employment caused or aggravated a diagnosed condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁶ In a May 30, 2007 report, Dr. Cham noted appellant's history including a left knee injury from a fall on February 24, 2004 and a fall in October 2005. She also advised that appellant had left hip pain and arthritis in her knee. Dr. Cham indicated that appellant's letter carrier duties included lots of walking and going up and down stairs. She advised that the arthritis was aggravated by the fall, which resulted in the eventual need for surgery to the left knee. However, Dr. Cham did not explain how she arrived at her opinion on causal relationship. The Board notes that an aggravation of an underlying condition by employment factors must be established by probative medical opinion evidence.⁷ Additionally, it appears that Dr. Cham is relating appellant's condition to a traumatic event instead of to an occupational disease as claimed by appellant.⁸

On October 11, 2007 Dr. Cham indicated that appellant's left knee pain from arthritis was due to the "wear and tear from walking and stair climbing while bearing the weight of the mail satchel that [appellant] experienced while delivering mail in the years prior to her retirement." She opined that appellant's current activity levels were "contributing further aggravation to this joint, even though [she] has been retired since January 22, 2007." The Board notes that Dr. Cham's opinion is of limited probative value as she did not provide medical rationale to support her conclusion on causal relationship.

In a March 6, 2008 report, Dr. Cham indicated that appellant had a meniscal tear while delivering the mail on July 28, 2001. She also noted that appellant sustained a left knee injury while at work on February 24, 2003 when she slipped while going down stairs. To the extent Dr. Cham is relating appellant's condition to these episodes, these matters relate to traumatic events and are not consistent with a claim for an occupational disease.⁹ She also diagnosed osteoarthritis of the left knee noting that appellant had "throbbing pain and swelling of the left

⁶ *K.W.*, 59 ECAB ____ (Docket No. 07-1669, issued December 13, 2007).

⁷ *A.C.*, 60 ECAB ____ (Docket No. 08-1453, issued November 18, 2008).

⁸ *See* 20 C.F.R. § 10.5(q), (*ee*) (a traumatic injury is a condition caused by a specific event or incident, or series of incidents, within a single workday while an occupational disease is a condition produced by the work environment over a period longer than a single workday or shift).

⁹ *See id.*

knee” and opined that her condition was due to the “wear and tear from walking and stair climbing while bearing the weight of the mail satchel that she experienced while delivering the mail in the years prior to her retirement.” Dr. Cham opined that appellant’s current activity contributed to “further aggravation to this joint, even though she has been retired since January 22, 2007.” She opined that “with reasonable medical certainty” that appellant’s work activities, “including the walking and stair climbing while carrying a weighted mail satchel did contribute significantly to the worsening of the left knee condition of tricompartmental arthritic changes and tear of the posterior horn of the lateral meniscus.” However, Dr. Cham did not support her opinion with a rationalized explanation. The Board finds her conclusion unconvincing, despite her noting that appellant has been retired since January 2007, because she does not explain the reasons for this conclusion. For example, Dr. Cham did not provide medical rationale in this or other reports to explain why work duties that ended no later than January 2007, caused an aggravation of left knee osteoarthritis and why such condition would not be due to the nonwork-related left hip condition. As noted, part of appellant’s burden of proof includes the submission of rationalized medical opinion evidence.

Other medical evidence submitted by appellant is also insufficient to establish her claim. In a March 21, 2006 treatment note, Dr. Zvirbulis noted that appellant had six-year history of left leg pain and arthritic knee pain, which included “slip downstairs a year ago, another injury about three years ago.” He noted x-rays findings and opined that “the majority of [appellant’s] leg symptoms are due to the severe osteoarthritis of the left hip.” The Board notes that this report tends to support that appellant’s condition is due to her preexisting severe osteoarthritis of the left hip. In a July 26, 2006 report, Dr. Kopparam noted diagnoses and appellant’s disability status but he did not provide any opinion on causal relationship.¹⁰

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹¹ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹²

On appeal, appellant’s representative alleged that the reports of Dr. Cham were sufficient to establish causal relationship. However, as noted above, Dr. Cham did not provide a rationalized opinion explaining how appellant’s condition was related to factors of her employment.

As there is no probative, rationalized medical evidence addressing and explaining why appellant’s left knee condition was caused and/or aggravated by factors of her employment, she has not met her burden of proof in establishing that she sustained a medical condition in the performance of duty causally related to factors of employment.

¹⁰ See *supra* note 6.

¹¹ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹² *Id.*

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained a left knee condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 15 and June 3, 2008 are affirmed.

Issued: August 17, 2009
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