United States Department of Labor
Employees' Compensation Appeals Board

M.J., Appellant	)	
and	)	**Docket No. 08-2549**
	)	**Issued: July 9, 2009**
DEPARTMENT OF THE NAVY, NAVAIR DEPOT, Jacksonville, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On September 22, 2008 appellant filed a timely appeal from a July 21, 2008 merit decision of the Office of Workers' Compensation Programs denying modification of a February 27, 2008 merit decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3 the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant sustained degenerative knee disease and meniscal tears in the performance of duty on January 5, 2006.

FACTUAL HISTORY

On January 24, 2006 appellant, a 55-year-old paralegal specialist, filed a traumatic injury claim (Form CA-1) for bruised knees, left shoulder and left hip. She attributed her bruise injuries to a January 5, 2006 incident when she tripped on a manhole and fell, hitting both her knees, her left shoulder and left hip as she landed.

By report dated January 18, 2006, Dr. Lawrence Briggs, a Board-certified diagnostic radiologist, reported that four views of appellant's knees revealed no evidence of fracture, dislocation, joint effusion or arthritis. He noted that her knees were normal bilaterally.

In a report dated August 16, 2006, Dr. George Vega, a Board-certified diagnostic radiologist, reported findings following a magnetic resonance imaging (MRI) scan performed on appellant's right and left knees. Regarding the right knee, he noted that, although degeneration extended into the inferior surface, there was no evidence of surface tear. An MRI scan of the left knee revealed myxoid degeneration of the lateral meniscus without evidence of surface tear and mild to moderate degenerative change of the medial and lateral compartments, as well as the patellofemoral compartment, including chondromalacia patellae. Dr. Vega also noted the presence of a Baker's cyst poster medially of the left knee.

After initially denying the claim on March 9, 2007, for insufficient medical evidence, by August 13, 2007 decision, the Office accepted appellant's claim for bilateral contusion of the knee and lower leg.

Dr. Ren-Chang Liu, diagnostic radiologist, in a May 23, 2007 report noted that x-rays, conducted May 11, 2007, revealed no bone or joint abnormalities. He reported that the boney architecture was normal and that the articular cortices were smooth and regular. Dr. Liu noted that there was no evidence of acute or recent fracture or dislocation and no unusual soft tissue calcifications were shown.

By report dated June 1, 2007, Dr. Ramon A. Perez reported that an MRI scan conducted May 22, 2007 of appellant's left knee revealed a complex tear of the posterior horn of the medial meniscus. He also reported the presence of a popliteal cyst and a moderate amount of joint fluid. Additionally, Dr. Perez observed mild thinning of the patellar articular cartilage. He suspected stretching rather than a partial tear of the anterior cruciate ligament. Furthermore, an MRI scan of the right knee revealed a horizontal tear of the posterior horn of the medial meniscus and type 1 chondromalacia patella changes as well as a small amount of joint fluid collection.

Appellant submitted an October 25, 2007 medical report signed by Dr. Kevin Murphy who, after reviewing the results from the May 22, 2007 radiological examination, diagnosed bilateral knee meniscus tear, chondromalacia of the bilateral knee and left Baker's cyst. Dr. Murphy reported that the MRI scan of her left knee revealed a complex tear of the posterior horn of the medial meniscus and a popliteal cyst. An MRI scan of the right knee revealed horizontal tear of the posterior horn of the medial meniscus and type 1 chondromalacia patella. X-rays of both knees revealed mild degenerative joint disorder with narrowing of the medial compartment joint space. Dr. Murphy recommended a left knee scope medial meniscectomy and chondroplasty.

Appellant disagreed with the Office's August 13, 2007 decision and on January 9, 2008, requested reconsideration. She argued that the medical evidence demonstrated the presence of degenerative changes to her knees as well as meniscal tears and, had she not fallen while in the performance of duty on January 5, 2006, the bilateral knee medial meniscus tears would not have occurred.

In a medical note dated December 12, 2007, Dr. Murphy reported that, based upon his examination of appellant on October 25, 2007, radiographs of both knees and an MRI scan of both knees, her current knee injuries were new and related to her fall on January 5, 2006. He reported a diagnosis of bilateral knee medial meniscus tears, chondromalacia of the right knee and popliteal cyst of the left knee.

By decision dated February 27, 2008, the Office denied modification of its August 13, 2007 decision. It found the medical evidence of record insufficient to establish appellant's claim because it lacked rationalized medical opinion evidence concerning the causal relationship between her bilateral knee conditions and her federal employment.

Appellant disagreed with the Office's February 27, 2008 decision and on May 6, 2008 and again requested reconsideration.

Appellant submitted a March 21, 2008 note signed by Dr. Eric Bonenberger, a Board-certified orthopedic surgeon, who reported that he treated her for 18 months during which she never complained of knee pain. Dr. Bonenberger opined that appellant's current knee condition, bilateral acute medial meniscal tears, was caused by her January 5, 2006 injury.

In an April 3, 2008 note, Dr. Murphy reported that his clinical findings as well as the MRI scan images of both her knees were consistent with meniscal tears in the medial aspect of her knee. He noted that this type of injury was consistent with the mechanism of injury as stated by appellant. Dr. Murphy opined that there was a high degree of medical certainty that these meniscal tears occurred as a result of this injury. Finally, he opined that the fact that appellant may have had a previous surgery as a child for patella tendon issues was irrelevant to the present situation.

By decision dated July 21, 2008, the Office denied modification of its February 27, 2008 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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.[2]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment

[1] 5 U.S.C. §§ 8101-8193.

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

incident at the time, place and in the manner alleged.[3] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[4]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[5] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

ANALYSIS

The Office accepted appellant's claim for bilateral contusion of the knee and lower leg. Appellant disagreed and requested reconsideration asserting that the Office should also accept her claim for bilateral knee meniscus tear, chondromalacia of the bilateral knee and left Baker's cyst because had she not fallen on January 5, 2006 these new conditions would not have developed.

The Board finds that the evidence does not establish that appellant sustained degenerative knee disease and meniscal tears in the performance of duty on January 5, 2006. Although she identified an employment-related event, which she believed caused her newly diagnosed conditions, she failed to submit any competent rationalized medical evidence establishing that these conditions were causally related to the accepted injury.

The Board has consistently held that medical reports lacking a rationale on causal relationship are of diminished probative value.[7] A rationalized medical opinion is based on a complete factual and medical background and is supported by medical rationale.[8] As noted

[3] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[4] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[5] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[6] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing a rationale on causal relationship are entitled to little probative value). *See also, Jimmie H. Duckett*, 52 ECAB 332 (2001).

[7] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

[8] *Froilan Negron Marrero*, 33 ECAB 796 (1982).

above, rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and employment factors and employment-related events or an accepted condition.

Moreover, a physician's opinion on the causal relationship between an appellant's disability and an employment injury is not dispositive simply because it is rendered by a physician.[9] The opinion of a physician supporting causal relationship must be based on a complete and accurate medical and factual background, supported with affirmative evidence and explained by medical rationale.[10]

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report[11] and contemporaneous evidence is entitled to greater probative value than later evidence.[12]

In his March 21, 2008 note, Dr. Bonenberger opined that since appellant did not complain of knee pain during the 18 months he treated her present knee condition, bilateral acute medial meniscal tears, was caused by her January 5, 2006 injury. But his report does not present findings upon examination or a thorough review of appellant's medical history. Dr. Bonenberger's medical note proffered no rationalized medical opinion concerning a causal relationship between appellant's currently diagnosed knee condition and factors of her employment, an employment-related event or her accepted medical condition, bilateral contusion of the knee and lower leg. The mere fact that a condition manifests itself or is worsened during a period of employment does not raise an inference of causal relationship between the two.[13] Therefore, Dr. Bonenberger's note does not satisfy appellant's burden of proof.

Dr. Murphy, in his April 3, 2008 note, opined that meniscal tears in the medial aspect of appellant's knee were consistent with the mechanism of injury as stated by her and, therefore, that the diagnosed meniscal tears occurred as a result of her January 5, 2006 injury. But his medical note is of diminished probative value because it too did not proffer a rationalized medical opinion concerning the causal relationship between these newly diagnosed conditions and factors of appellant's employment, an employment-related event or her accepted medical condition, bilateral contusion of knee and lower leg. As noted above, medical reports lacking a rationale on causal relationship are of diminished probative value.[14] A rationalized medical

[9] *Jean Culliton*, 47 ECAB 728, 735 (1996).

[10] *Robert Broom*, 55 ECAB 339 (2004); *Patricia J. Glenn*, 53 ECAB (2001).

[11] *Michael S. Mina*, 57 ECAB 379 (2006).

[12] *S.S.*, 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008).

[13] *William Nimitz, Jr.*, 30 ECAB 567 (1979).

[14] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

opinion is based on a complete factual and medical background and is supported by medical rationale.[15] As previously noted, a physician's opinion on the causal relationship between appellant's disability and an employment injury is not dispositive simply because it is rendered by a physician.[16] Mere repetition of her allegations and analysis does not constitute adequate medical reasoning to qualify a physician's opinion as rationalized medical opinion evidence.[17] Because Dr. Murphy's April 3, 2008 note did not present findings upon examination, a complete medical history or a rationalized medical opinion, it is of diminished probative value and insufficient to satisfy appellant's burden of proof.

Finally, the Board notes that these two medical reports were rendered more than two years after the date of the injury, January 5, 2006. The findings in these reports were corroborated by the recent medical evidence of record. Thus, in contrast to Dr. Murphy and Dr. Bonenberger's reports, Dr. Briggs, Board-certified diagnostic radiologist, in a medical report dated January 18, 2006, reported that four views of knee revealed no evidence of fracture, dislocation or joint effusion or arthritis. Similarly, Dr. Vega, Board-certified diagnostic radiologist, in a report dated August 16, 2006, noted that, although degeneration did extend to the inferior surface, there was no evidence of surface tear. Dr. Liu, also a diagnostic radiologist, on May 23, 2007 reported that appellant's knees were normal and that there was no evidence of acute or recent fracture or dislocation and no unusual soft tissue calcifications were shown.

The Board has held that contemporaneous evidence is entitled to greater probative value than later evidence.[18] As the findings of Dr. Briggs and Dr. Vega were contemporaneous with the January 5, 2006 employment-related incident they are entitled to greater probative value. There is no rationalized medical evidence to explain why the currently diagnosed conditions would have developed more than a year following the injury, if the conditions were not present during the weeks and months following injury. Therefore, the Board finds the contemporaneous medical evidence more convincing and entitled to greater probative value than the medical reports of Dr. Murphy and Dr. Bonenberger. The absence of contemporaneous evidence of degenerative knee disease and meniscal tears or of any subsequent bridging symptoms for months following the January 5, 2006 incident mitigate against the existence of a causal relation between the January 5, 2006 injury and the newly diagnosed conditions.[19]

The matter before the Board is a medical issue which can only be resolved by submission of substantive, pertinent, relevant and probative medical evidence. The Office informed appellant of the need to submit a physician's opinion which explained how the claimed condition was related to the implicated employment factors. Appellant failed to submit any probative

[15] *Froilan Negron Marrero*, 33 ECAB 796 (1982).

[16] *Jean Culliton*, 47 ECAB 728, 735 (1996).

[17] *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

[18] *Conard Hightower*, 54 ECAB 796 (2003). *See also, Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971) (the Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence).

[19] *Fred Carmen*, 11 ECAB 281 (1960).

medical evidence in support of her claim.[20] Therefore, the Board finds that appellant has not established that she sustained degenerative knee disease and meniscal tears in the performance of duty on January 5, 2006.

CONCLUSION

The Board finds that appellant has not established that she sustained degenerative knee disease and meniscal tears in the performance of duty on January 5, 2006.

ORDER

IT IS HEREBY ORDERED THAT the July 21, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[20] *Donald W. Wenzel*, 56 ECAB 390 (2005); *Richard H. Weiss*, 47 ECAB 182 (1995).