

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

E.K., Appellant

and

**DEPARTMENT OF THE INTERIOR,
GLACIER NATIONAL PARK,
West Glacier, MT, Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 09-692
Issued: September 29, 2009**

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 13, 2009 appellant filed a timely appeal from an Office of Workers' Compensation Programs' October 22, 2008 merit decision. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On August 19, 2008 appellant, a 71-year-old visitor use assistant/fee collector, filed an occupational disease claim for benefits. She alleged that as of July 13, 2008 she became aware that she had sustained a left quadriceps condition causally related to factors of her employment.

By letter dated September 4, 2008, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits.

The Office asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition, and an opinion as to whether her claimed conditions were causally related to her federal employment.

In a form report dated August 11, 2008, received by the Office on September 8, 2008, Dr. R. Rottenbiller, a Board-certified family practitioner, stated that appellant had muscle atrophy to the left thigh caused by “pressure.” He released appellant to return to normal activity so long as she avoided leaning on her left leg.

In a statement received by the Office on September 8, 2008, appellant stated:

“I work as a fee collector at [the employing establishment]. As part of my duties I stand and reach out the window to collect money and distribute literature. Because the customers do not get close enough to the window I must lean against the sill to reach them. There is a window sill in the kiosk that is pressing on the outside of my left leg about eight inches above the knee.

“My left leg injury began as a small dent on the outside of the leg about eight inches above the knee. The dent became deeper each day. The injured area (left thigh) felt numb after working for a couple of hours. Once the numbness began it did not go away until after the work shift was completed. I reported the injury to my supervisor. I then went to the doctor to have the symptoms checked.

“I have had no prior conditions or symptoms of this kind.”

By decision dated October 22, 2008, the Office denied appellant’s claim, finding that she failed to submit medical evidence sufficient to establish that she sustained a right shoulder condition in the performance of duty.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing that 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 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.³

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

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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 is usually rationalized medical 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.⁴

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed left thigh condition and his federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁵

ANALYSIS

The Board finds that appellant has failed to submit adequate medical evidence to establish that her left thigh condition was caused or aggravated by her employment as a visitor use assistant/fee collector. For this reason, she has not discharged her burden of proof to establish that her condition was sustained in the performance of duty.

The August 11, 2008 form report from Dr. Rottenbiller provided a diagnosis of muscle atrophy in the left thigh area. However, Dr. Rottenbiller did not address how appellant's left thigh condition was causally related to her employment factors. He stated that appellant's condition was caused by "pressure." Appellant related that her job duties required her to lean against a window sill in her kiosk to reach out to park visitors; the window sill pressed up against the outside of her left leg about eight inches above the knee, which eventually led to the alleged left leg injury. She stated that she developed a small dent on the outside of the leg about eight inches above the knee, which became deeper each day and ultimately became numb after she had worked for a couple of hours.

Neither Dr. Rottenbiller nor appellant sufficiently explained how her duties as a visitor use assistant/fee collector could have caused or aggravated her left thigh condition. The mere fact that appellant was asymptomatic of prior left thigh problems or that the condition manifested itself during a period of employment does not raise an inference of causal relation.⁶

⁴ *Id.*

⁵ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁶ *See Ernest St. Pierce*, 51 ECAB 623 (2000).

Dr. Rottenbiller's opinion is therefore of limited probative value as it does not contain medical rationale explaining how or why appellant's left thigh condition was currently affected by or related to her employment duties.⁷

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁸ Dr. Rottenbiller's opinion is of diminished probative value for the further reason that it is generalized in nature and equivocal in that he was not able to state conclusively that appellant's left thigh condition was causally related to her employment. The Office therefore properly found that appellant did not sustain a left thigh condition in the performance of duty.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence. The Office advised appellant of the type of medical evidence required to establish her claim; however, appellant failed to submit such evidence. Accordingly, the Office properly denied appellant's claim for compensation based on a left thigh condition.¹⁰

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish that her claimed left thigh condition was sustained in the performance of duty.

⁷ *William C. Thomas*, 45 ECAB 591 (1994).

⁸ *See Anna C. Leanza*, 48 ECAB 115 (1996).

⁹ *See Id.*

¹⁰ The Board notes that appellant submitted additional evidence to the record following the March 7, 2007 Office decision. The Board's jurisdiction is limited to a review of evidence which was before the Office at the time of its final review. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 29, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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