

that it was caused by his employment on February 26, 2009. In a supplemental statement dated February 27, 2009, appellant relates that on April 19, 2007 he underwent surgery on his right ankle for an “AFT reconstruction” and a release for plantar fasciitis -- right foot. He noted that he later broke the lateral tibial plateau in his left knee after falling down his stairs on April 24, 2007. Appellant returned to work, with restrictions, but alleged that long periods of employment-related walking and standing aggravated his condition to the extent that on February 23, 2009 he underwent knee surgery. It was after a discussion with his treating physician in 2009 that appellant learned his knee condition could be work related.

Appellant submitted a May 1, 2007 report in which Dr. Richard Granaghan, a Board-certified diagnostic radiologist, reported that x-rays of appellant’s knee revealed a nondepressed lateral tibial plateau fracture.

In a May 30, 2008 report, Dr. P. Marsh, an orthopedist, diagnosed Grade IV patellofemoral chondromalacia, trochlear distribution, cortical irregularity of the lateral tibial plateau, small joint effusion with minimal bursal prolapse and minimal lateral patellar subluxation.

Appellant submitted an unsigned February 23, 2009 surgical report describing his knee surgery and an unsigned report (Form CA-17) containing work restrictions.

By decision dated April 24, 2009, the Office denied the claim because the evidence of record did not demonstrate that appellant’s condition was caused by the established employment factors.

On March 15, 2009 appellant requested reconsideration.

Appellant submitted a note dated April 28, 2009 in which Dr. Joe Daniels, an orthopedist, reviewed appellant’s history of injury. Dr. Daniels states that appellant’s knee condition is “directly related” to his “foot problem” and that “his symptoms [were] aggravated at work.”

By decision dated June 15, 2009, the Office denied modification of its April 24, 2009 decision because the evidence of record did not demonstrate that appellant’s condition was caused by the established employment factors.

On July 29, 2009 appellant requested reconsideration.

By decision dated August 11, 2009, the Office denied the request without conducting merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of proof to establish the essential elements of his claim by the weight of the evidence,³

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB ____ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁴ As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

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.⁸

ANALYSIS -- ISSUE 1

The Office accepted that appellant established the employment factors he deemed responsible for his condition. Appellant's burden is to demonstrate that the established employment factors caused a medically-diagnosed condition. Causal relationship is a medical issue that can only be proven by probative, rationalized medical opinion evidence. Appellant has not submitted sufficient medical opinion evidence supporting his claim and, consequently, the Board finds appellant has not established he sustained an injury in the performance of duty causally related to his employment.

The reports signed by Drs. Granaghan and Marsh have limited probative value on causal relationship because they lack an opinion explaining how the established employment factors

⁴ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁶ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁷ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁸ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

caused the conditions they diagnosed.⁹ Thus, this evidence does not establish a causal relationship between the identified employment factors and appellant's condition.

The unsigned report (Form CA-17) and the unsigned surgical report lack probative value because they lack proper identification demonstrating that they were prepared by a physician.¹⁰ Thus, this evidence does not establish a causal relationship between the identified employment factors and appellant's condition.

An award of compensation may not be based on surmise, conjecture or speculation.¹¹ Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.¹² The fact that a condition manifests itself or worsens during a period of employment¹³ or that work activities produce symptoms revelatory of an underlying condition¹⁴ does not raise an inference of causal relationship between a claimed condition and employment factors.

Because the medical evidence contains no reasoned discussion of causal relationship, one that soundly explains how the established employment factors caused or aggravated a diagnosed medical condition, the Board finds that appellant has not established the essential element of causal relationship.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,¹⁵ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹⁶ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file

⁹ See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

¹⁰ See *R.M.*, 59 ECAB ___ (Docket No. 08-734, issued September 5, 2008); *Richard Williams*, 55 ECAB 343 (2004).

¹¹ *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

¹² *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

¹³ *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

¹⁴ *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155, 157 (1960).

¹⁵ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

¹⁶ 20 C.F.R. § 10.606(b)(2).

his or her application for review within one year of the date of that decision.¹⁷ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.¹⁸

ANALYSIS -- ISSUE 2

Appellant's reconsideration request did not demonstrate that the Office erroneously applied or interpreted a specific point of law, nor did it advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to merit review under the first two enumerated grounds under 20 C.F.R. § 10.606(b)(2).

Concerning the third enumerated ground, appellant submitted Dr. Daniels' April 28, 2009 note. The issue underlying appellant's claim is causal relationship. Because appellant had not previously submitted this note, it qualifies as "new" evidence. However, this note is not relevant to the issue of whether the accepted employment factors of walking and standing caused or aggravated appellant's knee condition. Dr. Daniels stated that appellant's knee condition was "directly related" to his "foot problem," but there is no evidence of record that appellant's "foot problem" was employment related.¹⁹ Although requested to do so, appellant failed to submit evidence detailing the etiology of his preexisting lower extremity conditions. In addition, while Dr. Daniels opined that appellant's "symptoms [were] aggravated at work," the question is whether appellant's knee condition, not symptoms, was aggravated by his work activities. Lacking such substantive content, Dr. Daniels' note, though "new," is not relevant or pertinent to the issue underlying appellant's claim and, therefore, provides no basis for reopening appellant's claim for further merit review.

Because appellant has not satisfied any of the above-mentioned criteria, the Board finds that the Office properly refused to reopen his case for further review of the merits of his claim.

CONCLUSION

The Board finds that appellant has not established he sustained an injury in the performance of duty causally related to his employment. The Board also finds the Office properly denied appellant's request for further review merits of his claim pursuant to 5 U.S.C. § 8128(a).

¹⁷ *Id.* at § 10.607(a).

¹⁸ *Id.* at § 10.608(b).

¹⁹ The Office's decision refers to a prior case, claim number xxxxxx575, regarding appellant's right ankle. That case is not probative regarding appellant's left knee surgery.

ORDER

IT IS HEREBY ORDERED THAT the August 11 and June 15, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 2, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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