

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

E.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pontiac, MI, Employer**

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**Docket No. 09-1303
Issued: February 1, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 April 22, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 29, 2008, which denied her claim for a traumatic injury. Pursuant to 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 knee injury while in the performance of duty.

FACTUAL HISTORY

On September 16, 2008 appellant, then a 41-year-old letter carrier, filed a traumatic injury claim alleging that on January 8, 2008 she slipped on ice while delivering mail and injured her left knee. She did not stop work. Appellant submitted a report of accident dated September 16, 2008 indicating that she slipped on ice while delivering mail.

On September 23, 2008 the Office advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence, particularly requesting that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

Appellant submitted a clarifying statement noting that her date of injury was February 5, 2008 and not January 7, 2008 as indicated on the Form CA-1. She submitted an October 1, 2008 statement from her supervisor, Raymond Sherrod, who indicated that on February 4, 2008 she notified him by telephone that she fell; however, she believed that she would be alright. Also submitted was a statement from a coworker who indicated that she was assigned appellant's route in the past and developed tendinitis of the knees. Appellant submitted a telephone bill, instructions for preparing workers' compensation forms and a statement of employees benefits, rights and responsibilities. She also forwarded a magnetic resonance imaging (MRI) scan of the left knee dated May 7, 2008, which revealed possible developing interosseous ganglion cyst posterior to the acromioclavicular ligament, a slight tilt of the patella and mild subluxation. A September 4, 2008 x-ray of the left knee revealed a lateral tilt of the patella, mild narrowing of the lateral knee joint compartment and a possible small knee joint effusion.

Appellant was treated by Dr. Gary G. Gilyard, a Board-certified orthopedist, from September 4 to October 13, 2008 for a left knee injury. In reports dated September 4 and 19, 2008, she presented with left knee pain and reported that as a mail carrier she was required to walk distances which caused her left knee to become symptomatic. Appellant reported no episode of trauma but noted that she had been attacked by dogs three or four times. Dr. Gilyard noted findings of tenderness at the lateral facet of the patellofemoral joint and the medial patellofemoral ligament, positive posterior drawer and full range of motion. He diagnosed acromioclavicular ligament instability and partial posterior ligament tear and returned appellant to work with restrictions and a knee brace. In an October 2, 2008 report, Dr. Gilyard noted that she initially reported no episode of trauma and subsequently indicated that she fell and twisted her knee. He opined that this episode is what "probably" contributed to appellant's ligament insufficiency. Dr. Gilyard stated that this was a work-related issue. On October 13, 2008 he indicated appellant's job as a letter carrier was very active and she was experiencing pain and instability of her knee. Dr. Gilyard opined that conservative treatment failed and recommended anterior cruciate ligament reconstruction and weight reduction.

In a decision dated October 29, 2008, the Office denied appellant's claim for an injury on the grounds that the medical evidence was insufficient to establish that her left knee injury was causally related to her work duties.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 filed within the applicable time limitation of the Act, that an injury was sustained in the

¹ 5 U.S.C. §§ 8101-8193.

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. 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.²

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.³ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁴

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 The weight of 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

Appellant alleged that she sustained a left knee injury when she slipped on ice while delivering mail. The Board notes that the evidence supports that the incident occurred on February 5, 2008 as alleged. The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a left knee injury causally related to the February 5, 2008 work incident.

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Id.*

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

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

On September 23, 2008 the Office advised appellant of the type of medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from an attending physician addressing how the February 5, 2008 work incident may have caused or aggravated her claimed condition.

In support of her claim, appellant submitted reports from Dr. Gilyard dated September 4 and 19, 2008 who treated her for left knee pain. Dr. Gilyard diagnosed acromioclavicular ligament instability and partial posterior ligament tear. He related that appellant reported working as a mail carrier and walking distances and subsequently experiencing left knee pain and clicking. Appellant reported no episode of trauma but indicated that these symptoms occurred when she was working. Dr. Gilyard opined that her condition was employment related based on her presentation and history. However, he did not provide a rationalized opinion explaining the reasons why any diagnosed conditions were caused or aggravated by the February 5, 2008 fall.⁷ Furthermore, Dr. Gilyard appeared to support that appellant's condition was in the nature of an occupational disease as his report indicates that her condition occurred over a period of time even though her claim is for a February 5, 2008, traumatic injury due to a fall on ice while delivering mail.⁸ Thus, his opinion is of diminished probative value as it is not based on an accurate factual background regarding the cause of the claimed condition.⁹ These reports are insufficient to meet appellant's burden of proof.

In an October 2, 2008 report, Dr. Gilyard noted that appellant initially reported no episode of trauma but then indicated that she fell and twisted her knee. He opined that this episode is what "probably" contributed to her ligament insufficiency while also noting that this was a "work-related issue." While this report notes a traumatic incident and provides some support for causal relationship, it is insufficient to establish that the claimed left knee condition was causally related to a February 5, 2008 fall. Dr. Gilyard did not show any knowledge of when the claimed injury occurred. He also opined that the fall at work "probably" contributed to appellant's condition and reiterated that this was a "work[-]related issue." Dr. Gilyard also provides speculative and unrationalized support for causal relationship as he qualifies his support by noting both that she has a work-related knee condition and that the employment "probably" contributed to her condition.¹⁰ The need for medical rationale is especially important where the claimed injury occurred on February 5, 2008 but appellant apparently did not seek any treatment for the injury until May 2008 and where the medical reports do not provide a clear history of injury. Therefore, this report is insufficient to meet her burden of proof. Dr. Gilyard's October 13, 2008 status report did not address the cause of appellant's condition.

⁷ *Id.*

⁸ See 20 C.F.R. § 10.5(q) (defines an occupational disease as occurring over a period longer than a single workday or shift) 20 C.F.R. § 10.5(ee) (defines a traumatic injury as a condition caused by a specific event or incident within a single workday).

⁹ See *Vernon R. Stewart*, 5 ECAB 276, 280 (1953) (where the Board held that medical opinions based on histories that do not adequately reflect the basic facts are of little probative value in establishing a claim).

¹⁰ See *Jennifer Beville*, 33 ECAB 1970 (1982) (where the Board found a physician's statement that appellant's complaints "could have been" related to an employment incident to be speculative and of limited probative value).

Likewise, reports of diagnostic testing, such as MRI scan reports and x-rays are insufficient to establish appellant's claim as they do not provide a physician's opinion on the causal relationship between her job factors and a diagnosed medical condition.

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.¹¹ Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied her claim for compensation.¹²

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a left knee injury causally related to her February 5, 2008 employment incident.

¹¹ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹² See 5 U.S.C. § 501.2(c). The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision therefore the Board is unable to review evidence submitted by appellant after the October 29, 2008 Office decision.

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 2010
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