

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

T.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Indianapolis, IN, Employer**

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**Docket No. 09-1428
Issued: January 25, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On May 18, 2009 appellant filed a timely appeal from an April 17, 2009 merit decision of the Office of Workers' Compensation Programs affirming an October 23, 2008 merit decision that denied her claim. 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 sustained an injury in the performance of duty causally related to her employment.

FACTUAL HISTORY

On June 14, 2007 appellant, a 44-year-old modified sales, service/distribution associate, filed an occupational disease claim (Form CA-2) alleging that her current window clerk duties

and her prior rural carrier duties caused and aggravated her knee condition.¹ She attributed her condition to repetitive lifting of trays, sitting, walking, kneeling, bending, stooping, twisting, pulling, pushing, grasping and standing for long periods of time. Appellant first realized her condition was caused by her federal employment on March 28, 2007.

Dr. Mary E. Below, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of appellant's left knee, performed December 27, 2006, revealed small joint effusion as well as an eight to nine millimeter indentation along the cortical surface of the lateral facet of the patella with overlying abnormal heterogeneous signal in the cartilage consistent with an osteochondral lesion. The scan also revealed a two-centimeter septated cystic mass in the superior medial aspect of the popliteal space.

In an operative note dated March 28, 2007 Dr. Robert Malizak, a Board-certified orthopedic surgeon, diagnosed appellant with left knee pain, left knee lateral meniscus tear, medial femoral condyle and patellofemoral chondromalacia. He indicated that she had undergone surgery to treat these conditions. Dr. Malizak offered no opinion regarding the cause of these conditions.

In an April 3, 2007 report, Dr. Malizak diagnosed deep vein thrombosis in appellant's knee. In a report dated May 16, 2007, Dr. Sridhar R. Bolla, a Board-certified hematologist, diagnosed deep vein thrombosis of the left lower extremity "secondary to some valve dysfunction."

In a June 14, 2007 report (Form CA-20), Dr. Malizak reported findings on examination and diagnosed back strain, meniscus and lateral meniscus tear, low back pain, lumbar joint syndrome, bilateral shoulder tendinitis, shoulder instability and both cubital and carpal tunnel syndrome. He checked a box "yes" indicating that he believed that the diagnosed conditions were "caused by the injury at work [on] November 3, 1993."

Appellant submitted a June 17, 2007 note describing her medical condition and history of injury.

On February 10, 2008 the Office received an undated report on the letterhead of Joint Replacement Surgeons of Indiana. This unsigned report provided a detailed summary of appellant's medical treatment by various physicians in a number of different practices and clinics. The report concluded that appellant's alleged that employment duties did cause and/or aggravate her diagnosed conditions.

On February 26, 2008 Dr. Malizak reported appellant was incapacitated from performing her assigned duties due to her medical conditions.

¹ The Board notes a factual inconsistency exists concerning the date appellant filed her Form CA-2. Appellant dated her CA-2 form June 14, 2007. Appellant's supervisor's signature was dated June 25, 2008. The CA-2 form was date stamped February 21, 2008. The Office's October 23, 2008 decision reports the filing date as June 14, 2007.

The Office by letter dated September 3, 2008, contacted Dr. Malizak concerning appellant's medical condition. It submitted to Dr. Malizak a statement of accepted facts and requested that he furnish a detailed narrative report responding to questions it raised.

The record reflects that Dr. Malizak did not respond to the Office's September 3, 2008 letter.

By decision dated October 23, 2008, the Office denied the claim. While it accepted appellant established employment factors she considered responsible for her condition, the evidence of record did not demonstrate that the accepted employment factors caused a medically diagnosed injury.

Appellant disagreed and on October 26, 2008, through her attorney, requested a telephonic hearing.

At a hearing, conducted February 11, 2009, appellant testified about her employment duties, prior claims, employment history and her left knee condition. Appellant's attorney argued that the Office failed to grasp what appellant was claiming.

By decision dated April 17, 2009, the Office denied the claim because the evidence of record lacked sufficient medical evidence demonstrating that the identified employment factors caused a medically diagnosed condition.

LEGAL PRECEDENT

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 including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she 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

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).

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

⁵ *G.T.*, *supra* note 4; *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).

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

ANALYSIS

The Office has accepted appellant's alleged employment factors as occurring in the performance of duty. Appellant's burden is to demonstrate that the accepted employment factors caused a diagnosed injury. Causal relationship is a medical issue that can only be proven through production of probative 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 Appellant has not submitted sufficient medical evidence and therefore the Board finds that she has not met her burden of proof to establish that she sustained an injury in the performance of duty causally related to her employment.

The medical opinion evidence of record consists of reports from Drs. Below, Bolla and Malizak. Dr. Below, a diagnostic radiologist, reported the results of appellant's December 27, 2006 left knee MRI scan as revealing small joint effusion and osteochondral lesion. She however offered no opinion regarding the cause of these conditions. Dr. Bolla diagnosed deep vein thrombosis of the left lower extremity on May 16, 2007 and related this condition to "some valve dysfunction." These reports lack an opinion explaining how the accepted employment factors caused the conditions diagnosed.⁹

Dr. Malizak's narrative reports offered no opinion causally relating appellant's conditions to the alleged factors of employment. On June 14, 2007 he did complete a CA-20 form wherein he checked a box "yes" indicating that her back, shoulder, carpal tunnel and meniscus tear conditions were caused by a November 3, 1993 work injury. The Board notes that the 1993 alleged work injury is not the subject of this claim. Furthermore, the Board has held that checking a box "yes" is of little probative value in establishing causal relationship.¹⁰

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).

⁹ See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). See also, *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001).

¹⁰ *Barbara J. Williams*, 40 ECAB 649, 656 (1989).

Finally, the Board notes that the Office received an undated and unsigned medical report on February 10, 2008. While this report ostensibly offered a medical opinion causally relating appellant's diagnosed conditions to her alleged employment factors, the Board has held that lacking proper identification, reports cannot be considered as probative evidence.¹¹ This defect reduces the probative value of this report such that it is insufficient to satisfy appellant's burden.

An award of compensation may not be based on surmise, conjecture or speculation. Neither, the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.¹²

The Board finds that appellant has not established that she sustained an injury in the performance of duty causally related to her employment.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty causally related to her employment.

¹¹ *Merton J. Sills*, 39 ECAB 572 (1988).

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

ORDER

IT IS HEREBY ORDERED THAT the April 17, 2009 and October 23, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 25, 2010
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