

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

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C.H., Appellant )

and )

DEPARTMENT OF THE AIR FORCE, MINOT )  
AIR FORCE BASE, Minot, ND, Employer )

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**Docket No. 10-89  
Issued: July 23, 2010**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On October 13, 2009 appellant filed a timely appeal of a September 17, 2009 decision of the Office of Workers' Compensation Programs denying her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury on December 12, 2008, as alleged.

**FACTUAL HISTORY**

On July 29, 2009 appellant, then a 49-year-old secretary, filed a traumatic injury claim alleging that on December 12, 2008 she injured her left knee after slipping and falling on a wet floor at work. She stopped work on December 12, 2008 and returned on December 15, 2008.

On August 4, 2009 the Office advised appellant of the factual and medical evidence necessary to establish her claim and allowed her 30 days to submit such evidence.

X-ray reports dated December 12, 2008 from Dr. James Call, a Board-certified radiologist, found minimal arthritic changes involving appellant's left knee with no abnormalities. Dr. Call noted that appellant had a history of falling on her left knee. He also noted that appellant's left knee had intact bony structures, no joint space narrowing and very minimal arthritic changes noted with sharpening of the intercondylar eminence. Dr. Call further found no evidence of any increased fluid seen from the joint space.

In a December 12, 2008 report, Dr. Joe Smothers, an osteopath Board-certified in family medicine, advised that appellant sought treatment for an injury to her right knee after falling the previous week. On examination, he noted tenderness over the anterior portion of the knee joint, tenderness over the distal patellar area and no obvious bony pathology.

In a January 13, 2009 x-ray report, Dr. Lee Podoll, Board-certified in diagnostic radiology and anatomic pathology, found minimal degenerative joint disease and no fracture or subluxation. A physician's assistant's report of the same date diagnosed left knee contusion. Appellant reported a history of falling at work on some water.

On March 27, 2009 Dr. Scott Lewis, a Board-certified diagnostic radiologist, indicated that an x-ray of appellant's left knee revealed that the distal left femur aligned with the proximal left tibia. He also found fairly well-maintained joint space, normal patella position and no definite evidence of effusion or fracture.

A nurse practitioner's treatment note of March 31, 2009 reported appellant's complaint of left knee pain after falling that morning. She indicated that appellant fell on the same knee multiple times on separate occasions. The nurse practitioner diagnosed left knee sprain.

In an April 16, 2009 report, Dr. Dawn Mattern, Board-certified in family medicine, noted that since December 2008 appellant had fallen on her left knee three separate times, landing on the anterior aspect. She stated that appellant was an obese female in no acute distress. On examination, there was some mild swelling of the left knee within subcutaneous tissues anteriorly. Dr. Mattern found no knee effusion, full range of motion, tenderness with palpation and fullness appreciated to the anterior fat pad along the medial aspect of the knee and possibly some mild prepatellar bursitis. She diagnosed anterior knee pain secondary to fat pad syndrome and recommended physical therapy.

In a decision dated September 17, 2009, the Office denied appellant's claim finding that, although the claimed incident occurred, the medical evidence was insufficient to relate a knee injury to the accepted incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his 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; that an injury was sustained while in the performance of

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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 on a traumatic injury or an occupational disease.<sup>2</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a “fact of injury” has been established. The employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>3</sup>

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.<sup>4</sup>

### ANALYSIS

The record reflects that on December 12, 2008 appellant slipped and fell on a wet floor while at work. However, the medical evidence does not establish that the December 12, 2008 fall caused or aggravated appellant’s alleged left knee condition.

In an April 6, 2009 report, Dr. Mattern noted that appellant had previously fallen on her left knee three separate times since December 2008. She diagnosed left anterior knee pain secondary to fat pad syndrome. However, pain is generally regarded as a symptom, not a compensable medical diagnosis.<sup>5</sup> Dr. Mattern did not provide an opinion regarding whether appellant’s condition was caused or aggravated by the December 12, 2008 fall.<sup>6</sup> Such an explanation on causal relationship is particularly important as appellant had sustained several falls between December 2008 and the April 6, 2009 visit with Dr. Mattern.

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<sup>2</sup> *S.P.*, 59 ECAB \_\_\_ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>3</sup> *Id.*

<sup>4</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>5</sup> *C.F.*, 60 ECAB \_\_\_ (Docket No. 08-1102, issued October 10, 2008).

<sup>6</sup> *See S.E.*, 60 ECAB \_\_\_ (Docket No. 08-2214, issued May 6, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

Dr. Smothers treated appellant on December 12, 2008 for right knee injury after sustaining a fall during the previous week. This report did not address appellant's left knee condition or the December 12, 2008 workplace fall. As Dr. Smothers did not specifically address whether the December 12, 2008 fall caused or aggravated a diagnosed left knee condition, it lacks probative value and is not sufficient to establish appellant's claim.

X-ray reports from Drs. Call, Podoll and Lewis found minimal arthritic changes of the left knee with no fracture or effusion. None of these reports addressed the issue of causal relationship or discussed whether the December 12, 2008 incident contributed to appellant's left knee condition. As noted, medical evidence without an opinion on causal relationship is of diminished probative value.

The record also contains treatment notes from a physician's assistant and nurse practitioner. The Board has noted that such individuals are not physicians as defined under the statute. Therefore, these reports do not constitute competent medical opinion evidence which, in general, can only be provided by a qualified physician.<sup>7</sup>

On appeal, appellant asserts that her fall occurred in her place of employment during the performance of duty and that she was informed all of her paperwork would be taken care of through workers' compensation. She requested payment of her medical bills due to the December 12, 2008 incident. It is not disputed that appellant fell at work. The claim is deficient because she did not submit a physician's reasoned opinion explaining how the workplace fall that day caused or aggravated a diagnosed medical condition. Appellant's burden of proof requires her to submit rationalized medical evidence supporting that her December 12, 2008 fall caused or contributed to her left knee condition. As noted, she has not met her burden of proof and is not entitled to compensation benefits.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained a traumatic injury on December 12, 2008 in the performance of duty.

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<sup>7</sup> See 5 U.S.C. § 8101(2) (defining the term "physician"); see also *Charley V.B. Harley*, 2 ECAB 208 (1949) (the Board held that medical opinion, in general, can only be given by a qualified physician).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated September 17, 2009 is affirmed.

Issued: July 23, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board