



much standing, walking, bending, pushing and pulling.”<sup>1</sup> Approximately, one week after returning to work, appellant experienced a burning sensation in the right knee. On December 26, 2007 her right knee buckled.

Under File No. xxxxxx306, the Office referred appellant to an impartial medical examiner to resolve a conflict between a second opinion physician and her treating physician, Dr. Rafat S. Nashed, a Board-certified orthopedic surgeon, as to the degree of her disability and recommended restrictions. In a June 25, 2007 report, Dr. Peter Mirkin, a Board-certified orthopedic surgeon, stated that objectively appellant was able to work eight hours a day, with restrictions, based upon the results of a January 3, 2007 functional capacity evaluation (FCE).<sup>2</sup> However, he noted her complaints that working in excess of six hours per day caused unrelenting pain, which required her to lie down for several hours. Dr. Mirkin advised that, if appellant’s representations were, in fact true, then she should work six hours a day with restrictions identified in the FCE. Upon the Office’s request for clarification regarding her permanent restrictions, Dr. Mirkin completed a work capacity evaluation on November 2, 2007. Dr. Mirkin found that appellant could work eight hours a day with restrictions, including lifting no more than 45 pounds and squatting for no more than two hours.

Based on Dr. Mirkin’s work restrictions, the employing establishment offered appellant a modified position as a clerk, working as a lobby assistant four to six hours a day, dispatching mail one to two hours a day, working “PC [B]ox” one hour a day and performing administrative duties one to two hours a day. These tasks involved intermittent standing and walking eight hours a day, with no lifting over 45 pounds. Appellant accepted the light-duty position and returned to work on December 5, 2007.

On December 26, 2007 appellant filed a notice of recurrence under File No. xxxxxx306 alleging that she reinjured her right knee while performing her employment duties. In a December 28, 2007 report, Dr. Nashed listed her symptoms of pain and discomfort in the right knee, which had been under control but returned after she increased her tour of duty to an eight-hour workday on December 5, 2007. On December 26, 2007 appellant’s right knee buckled at work and “she hurt her right knee, back and right hip area.” Dr. Nashed observed that she was limping and noted that she demonstrated right hip pain with range of motion. The right knee examination was negative. Dr. Nashed opined that a six-hour workday was reasonable, in light of the fact that appellant was able to continue with six-hour workdays for a total of 15 months without exhibiting difficulties but began experiencing symptoms within three weeks after she started working an eight-hour workday. He recommended that she remain off work for one week, then returned to light duty with restrictions, which included no standing or walking more than two hours per day; sedentary work four hours a day; and no lifting more than 25 pounds.

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<sup>1</sup> Appellant’s March 22, 2005 traumatic injury claim (File No. xxxxxx306) was accepted for a right knee strain and right meniscal tear with surgical repair. On January 11, 2006 the Office denied her request to expand the claim to include reflex sympathetic dystrophy and on February 14, 2006 it refused to expand the claim to include a consequential right hip condition and lumbar sprain. These claims were combined, as they related to a claimed right knee condition.

<sup>2</sup> Restrictions included lifting no more than 45 pounds occasionally and 25 pounds frequently.

On January 25, 2008 Dr. Nashed stated that appellant had experienced problems with her right knee since undergoing a right knee arthroscopy with partial medial and lateral meniscectomy on May 24, 2005. Appellant had been “functioning adequately” while working six hours per day with restrictions of no more than two hours of walking and one and a half hours of standing. Subsequent to her return to an eight-hour day, she experienced an increase in pain symptoms. On examination, appellant was unable to squat. In the right knee, she had full range of motion, with a negative McMurray’s test and positive tenderness medially. Appellant ambulated with a limp.

In a February 22, 2008 decision in File No. xxxxxx306, the Office denied appellant’s recurrence claim, finding that the evidence of record did not show a change in the nature of her accepted condition or demonstrate that the light-duty assignment changed such that it no longer met the restrictions assessed by Dr. Mirkin. It further found that the evidence failed to establish that a spontaneous return or increase of disability occurred as a result of her previous injury without an intervening cause and informed her that allegations that additional work factors aggravated her preexisting condition would constitute a claim for a new injury.

In a letter dated April 9, 2008, the Office informed appellant that the evidence and information submitted was insufficient to establish her occupational disease claim. It advised her to provide a detailed description of the job duties that allegedly caused or aggravated her claimed condition, as well as a reasoned physician’s report with a diagnosis and an explanation as to how the identified work activities caused her diagnosed condition.

Appellant submitted an undated statement reflecting that on December 13, 2007 she felt burning and discomfort due to pain in her right knee, hip and lower back. The pain continued until December 26, 2007, when her right knee “gave out.” Appellant attributed her condition to excessive walking, standing, bending, twisting, stooping, pulling, pushing and sitting on a stool with no back on hard floors for eight hours a day. On April 18, 2008 she stated that her duties included doing lock-box mail; separating Christmas cards; and assisting customers in the lobby; preparing dispatch of mail; answering telephones; retrieving any mail or parcel pick-up for customers if they did not have a money transaction. Appellant was allegedly on her feet from five and a half to six hours a day.

On April 18, 2008 Dr. Nashed opined that there was a causal connection between appellant’s right hip and lower back symptoms and her May 24, 2005 right knee surgery, due to the fact that she aggravated her lower back pain by favoring her right knee. He stated:

“It is a known phenomenon that a joint problem can affect other joints on the same side. Therefore, it is conceivable that she has aggravated and caused her hip pain because of favoring her right knee and thereby developed a right hip pain. In addition also, the same causal relationship can occur resulting in back pain for the same reason of favoring the right knee.”

In an April 22, 2008 memo, Postmaster James Maher stated that appellant’s work duties were not excessive and that her position had no physical demands. Appellant served as a lobby director and was basically “a face” for the employing establishment. Her duties did not require heavy lifting and was permitted to sit or stand at will as she assisted customers.

On April 25, 2008 Dr. Nashed noted that appellant had ongoing right knee problems and still ambulated with a significant antalgic gait. On examination, it was tender to touch and “burned” laterally with standing. Range of motion was 10 to 130 degrees of flexion, with pain, particularly with extension. Right knee x-rays showed narrowing of the medial joint space. On May 30, 2008 Dr. Nashed noted that appellant still experienced discomfort when extending her knee and ambulated with a slight limp. Appellant reportedly was able to perform her job duties with the same restrictions; however, she had to lay in bed for about two hours before she could continue with any other activities. Dr. Nashed opined that she had reached maximum medical improvement and released her from his care.

By decision dated June 10, 2008, the Office denied appellant’s claim on the grounds that the medical evidence of record did not support a diagnosed medical condition that could be connected to specific work factors. Therefore, appellant had failed to establish fact of injury.

On June 30, 2008 appellant requested an oral hearing. At the December 17, 2008 hearing, she testified that for two and a half years, she worked a six-hour a day job, which permitted her to sit most of the day. On December 5, 2007 appellant was switched to an eight-hour job, which required her to be on her feet most of her shift. She reinjured her knee on December 26, 2007 when it “gave out.” In her new position, appellant stood for eight hours in a cold lobby helping customers. Although she was initially given a stool, her postmaster told her that she had to stand. Appellant’s duties included separating mail, helping people with packages and opening doors.

Appellant submitted a copy of the second page of Dr. Mirkin’s June 25, 2007 report and copy of Dr. Nashed’s January 24, 2007 work capacity evaluation reflecting his opinion that she should be permanently restricted from working more than six hours a day.

By decision dated February 26, 2009, the Office hearing representative affirmed the June 10, 2008 decision, finding that the evidence failed to establish that appellant had sustained an injury or exacerbation of a knee, hip or back condition as a result of her employment duties from December 5 to 26, 2007.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>3</sup> 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 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.<sup>4</sup> These are the essential

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

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 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, generally, is rationalized medical opinion 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.<sup>6</sup>

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>7</sup>

### ANALYSIS

Appellant alleged that she sustained new injuries to her right knee, hip and back as a result of employment activities between December 5 and 26, 2007. The evidence supports that she returned to work in a modified clerk position from December 5 to 26, 2007, working eight hours a day. Physical requirements of the job included lifting no more than 45 pounds and intermittent standing and walking.<sup>8</sup> The medical evidence of record, however, is insufficient to establish that appellant's medical conditions are caused or aggravated by factors of her federal employment subsequent to her return to full duty on December 5, 2007. Therefore, she has failed to meet her burden of proof.

Contemporaneous medical evidence of record consisted of reports from appellant's treating physician, Dr. Nashed. On December 28, 2007 Dr. Nashed stated that symptoms related

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<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *Id.*

<sup>7</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>8</sup> The Board notes that appellant alleged that she was required to stand during the majority of her shift. Appellant's allegation was uncorroborated and was contested by her postmaster, who stated that she was provided a stool to use at her discretion.

to her previously accepted right knee condition reappeared within three weeks after she started working an eight-hour day. He reported that on December 26, 2007 appellant's right knee buckled at work and she hurt her right knee, back and right hip area. Dr. Nashed observed that she was limping and demonstrated right hip pain with range of motion. The right knee examination was negative. In light of the fact that appellant was able to continue with six-hour workdays for 15 months without exhibiting difficulties, but began experiencing symptoms within 3 weeks after she started working an eight-hour workday, Dr. Nashed opined that a six-hour workday was reasonable.

Dr. Nashed's report is of reduced probative value on several counts. He did not provide detailed examination findings or a specific diagnosis. The Board has held that a diagnosis of pain does not constitute a basis of payment for compensation, as pain is considered to be a symptom rather than a specific diagnosis.<sup>9</sup> Dr. Nashed failed to provide a definitive opinion as to the cause of appellant's current condition.<sup>10</sup> The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>11</sup> Although Dr. Nashed implied that appellant's return to an eight-hour day may have been related to her symptoms, he did not describe appellant's job duties or explain the medical process through which such duties would be competent to cause or contribute to the claimed conditions. Medical conclusions unsupported by rationale are of little probative value.<sup>12</sup>

Dr. Nashed's subsequent reports are also insufficient to establish appellant's claim. On January 25, 2008 he stated that while she had been "functioning adequately" while working six hours a day with restrictions of no more than two hours of walking and one and a half hours of standing, subsequent to her return to an eight-hour day, she experienced an increase in pain symptoms. Again, Dr. Nashed failed to provide a specific diagnosis or adequate medical explanation as to how her particular job duties during the period in question caused or exacerbated her condition. Therefore, the report is of limited probative value. Similarly, his April 25 and May 30, 2008 reports do not contain any opinion on causal relationship and, therefore, are of diminished probative value.

On April 18, 2008 Dr. Nashed opined that there was a causal connection between appellant's right hip and lower back symptoms and her May 24, 2005 right knee surgery, due to the fact that she aggravated her lower back pain by favoring her right knee. His opinion as to whether she developed right hip and lower back symptoms as a consequence of her accepted traumatic injury is not relevant to the issue in this case, namely, whether she developed a diagnosed condition as a result of established employment factors subsequent to December 5, 2007. As Dr. Nashed did not provide an opinion on the relevant issue, his report is of limited probative value.

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<sup>9</sup> *Robert Broom*, 55 ECAB 339 (2004).

<sup>10</sup> The Board has long held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value. *A.D.*, 58 ECAB 149 (2006); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>11</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>12</sup> *Willa M. Frazier*, 55 ECAB 379 (2004).

Appellant expressed her belief that her knee condition was exacerbated by prolonged standing at work and that her hip and back conditions were caused by conditions of her employment during the period in question. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>13</sup> Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>14</sup> Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit. Therefore, appellant's belief that her conditions were caused or aggravated by identified work events is not determinative.

On appeal, appellant contended that the impartial medical examiner's November 2, 2007 report was based on an incomplete evaluation from the Office's second opinion physician, Dr. Sciortino. The issue before the Office is not the adequacy of the impartial medical examiner's report, which addressed appellant's work capacity at that time. Rather, the issue is whether appellant sustained an injury causally related to conditions of her employment subsequent to her return to work on December 5, 2007. By virtue of its date, Dr. Mirkin's November 2, 2007 report is not relevant to the issue at hand.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report, which described her symptoms, test results, diagnosis, treatment and the physician's opinion, with medical reasons, on the cause of her condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how her claimed conditions were caused or aggravated by her employment, she has not met her burden of proof to establish that she sustained an occupational disease in the performance of duty causally related to factors of employment.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty, as alleged.

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<sup>13</sup> See *supra* note 11.

<sup>14</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 26, 2009 and June 10, 2008 decisions of the Office of Workers' Compensation Programs are affirmed

Issued: May 17, 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