

that her symptoms never get better. Appellant specifically noted that both of her knees continue to have sharp pains, stiffness, numbness and throbbing sensations. On the claim form and in a letter dated July 22, 2009, the employing establishment controverted her claim for recurrence. They noted that appellant sustained a traumatic injury to her knees on October 28, 1999, returned to work with modifications, and returned to full duty approximately six weeks after the date of her injury. The employing establishment argued that appellant's current condition is not associated with the original accepted condition of knee sprain and therefore she did not demonstrate a recurrence.

To support her claim, appellant submitted an April 27, 2009 report by Dr. Jacob Salomon, a Board-certified surgeon, who reported she had accepted bilateral knee injuries several years ago in 2002 and 2003 that were confirmed with magnetic resonance imaging (MRI) scan studies showing near complete loss of cartilage with trisegmental knee disease. Dr. Salomon noted that, although these claims were accepted in 2002 and 2003, she did not opt to proceed with surgical repair or replacement at that time. He stated that, although appellant was not currently working for the employing establishment, her normal daily living activities caused stress to her knee and aggravated the accepted bilateral knee condition. Dr. Salomon indicated that both knees are swollen with tenderness along both the left and right medial and lateral meniscus and decreased range of motion in both knees. He stated that appellant now will require orthopedic consultation with intensive rehabilitation and possible surgery.

On August 25, 2009 the Office accepted appellant's October 28, 1999 claim for bilateral sprains of unspecified sites, knee and leg.¹

In a September 15, 2009 report, Dr. Salomon noted that appellant had a history of falling at work at the employing establishment and traumatizing both knees on August 25, 2009. He noted that her claim had been accepted for sprain of the knee and legs. Dr. Salomon indicated that MRI scans were taken on both knees and that it was determined that appellant had left knee patellofemoral arthrosis with femoral tibial compartment, arthrosis of her right knee plus partial tear of the posterior cruciate ligaments. He requested that besides sprain of both knees that an internal derangement bilaterally of both knees be added to her accepted diagnosis with regards to the injury of October 28, 1999.

By decision dated September 30, 2009, the Office denied appellant's claim for a recurrence.

In an undated certification of health care provider, Dr. Yemaya Banks, a Board-certified family practitioner, indicated that appellant had chondromalacia bilateral knee pain that commenced in 1999.

On October 15, 2009 appellant requested reconsideration. In support of her request, she submitted an October 5, 2009 report wherein Dr. Salomon asked the Office to reconsider the denial of appellant's claim for a recurrence. Dr. Salomon noted the circumstances of appellant's

¹ The Office noted that appellant's October 28, 1999 claim had not been fully processed as at the time it was received, her injury appeared to be a minor injury with no time lost from work. Therefore it noted, a limited amount of medical expenses were approved.

original injury on October 28, 1999, stating that she was chased by a dog, twisted both knees and fell. He noted that she was diagnosed at that time with bilateral knee sprains and the claim was accepted for that condition. Dr. Salomon stated that a workup at that time revealed cartilage damage in both knees and that appellant was placed on limited duties for six weeks and that after physical therapy she returned to full duty delivering mail. He noted that she sustained subsequent injuries during her employment in 2004 when she broke her left ankle and in 2008 when she injured her right rotator cuff. Dr. Salomon opined that the cartilage damage in appellant's knees had progressed since her original injury in 1999. He reported that she experienced chronic pain in both knees after returning to work due to the cartilage damage caused by the employment injury. Dr. Salomon stated, "It is felt that her delivering mail has resulted in chronic irritation due to repetitive motion of the knees which is resulting in repetitive trauma further damaging the cartilage in her knees and causing her pain." He noted that new MRI scan showed progressive severe degenerative arthritis in both knees as well as a partial tear of the posterior cruciate ligament of the right knee which may require surgical repair. Dr. Salomon concluded that there was a recurrence on July 8, 2009 of the October 28, 1999 employment-related knee injury as progressive disease related to repetitive trauma while performing appellant's duties at the employing establishment delivering mail. He recommended acceptance of the reconsideration claim due to progressive degenerative change in her knee which started as a fall and knee sprain and has now resulted in degeneration of the cartilage which is progressive since the original sprains.

By decision dated January 4, 2010, the Office denied modification of its prior decision.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.² This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitation due to her work-related injury or illness is withdrawn -- except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force -- or when the physical requirements of such an assignment are altered so that they exceed the employee's established physical limitations.³ Moreover, when the claimed recurrence of disability follows a return to light-duty work, the employee may satisfy her burden of proof by showing a change in the nature and extent of the injury-related condition such that she was no longer able to perform the light-duty assignment.⁴

Where an employee claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing that the recurrence of disability is causally

² 20 C.F.R. § 10.5(x).

³ *Id.*

⁴ *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

related to his original injury.⁵ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.⁶ The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the employment injury.⁷ Where no such rationale is present, the medical evidence is of diminished probative value.⁸ In order to establish that a claimant's alleged recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between her present condition and the accepted injury must support the physician's conclusion of causal relationship.⁹

ANALYSIS

The Office accepted appellant's claim that on October 28, 1999 she sustained bilateral sprains of her knees and legs. The issue is whether appellant sustained a recurrence of this injury on March 9, 2009.

The Board finds that appellant failed to establish that she sustained a recurrence of her October 28, 1999 employment injury on March 9, 2009. The report of Dr. Banks is insufficient because it does not provide a rationalized explanation as to how her current conditions were causally related to her 1999 injury. Furthermore, Dr. Salomon's April 27 and September 15, 2009 reports do not definitively link appellant's condition on March 9, 2009 to her October 28, 1999 accepted injury. In the April 27, 2009 report, he indicated that he believed that her current problems with her knees stem from "knee injuries several years ago in 2002 and 2003." Dr. Salomon never mentioned the 1999 injury in this report. Furthermore, he noted that appellant no longer works for the employing establishment, but that her normal activities of daily living caused stress on her knees and aggravated her work-related bilateral knee condition. In his September 15, 2009 report, Dr. Salomon notes a new injury that occurred on August 25, 2009 when she fell at work. In this report, he requests that internal derangement bilaterally of both knees be added to the diagnosis with respect to her October 28, 1999 injury. However, Dr. Salomon provides no explanation linking the October 28, 1999 injury to her current condition. In an October 5, 2009 report, he asked the Office to reconsider its denial of appellant's claim for recurrence. Dr. Salomon noted that on October 28, 1999 she was delivering mail when, while running away from a dog, twisted both knees and fell. However, there is no indication in the file that appellant fell on October 28, 1999; she states on her claim form that she pulled her knee while running from a dog. Accordingly, Dr. Salomon's report is based on an inaccurate history of the work incident. Although he links appellant's recurrence to the work incident, his opinion is entitled to diminished weight due to his inaccurate history of the work

⁵ 20 C.F.R. § 10.104(b); *Carmen Gould*, 50 ECAB 504 (1999); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁶ See *Helen K. Holt*, *supra* note 5.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁸ See *Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁹ *Mary A. Ceglia*, 55 ECAB 626 (2004).

incident. Furthermore, Dr. Salomon does not provide an explanation of the progression of the original injury of October 28, 1999 to the alleged recurrence on March 9, 2009, almost 10 years later. He did not have a sufficient history with appellant to establish bridging symptoms between her accepted injury and the alleged recurrence, especially in light of his inaccurate history of her employment incident.

An award of compensation may not be based on surmise, conjecture or speculation.¹⁰ In order to establish a recurrence, the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury. As appellant has not submitted rationalized medical evidence establishing a causal relationship between her accepted injury of October 18, 1999 and a recurrence on March 9, 2009, she has failed to meet her burden of proof.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability on March 9, 2009 causally related to her October 28, 1999 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 4, 2010 and September 30, 2009 are affirmed.

Issued: February 9, 2011
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

¹⁰ *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).