

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

J.J., Appellant)
and) Docket No. 10-1351
DEPARTMENT OF VETERANS AFFAIRS,) Issued: January 14, 2011
VETERANS ADMINISTRATION MEDICAL)
CENTER, Houston, TX, Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 20, 2010 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs' merit decision dated December 8, 2009 denying her recurrence 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 established that she sustained a recurrence of disability beginning January 10, 2009 causally related to her November 29, 1999 employment injury.

FACTUAL HISTORY

This case has previously been before the Board. On May 21, 2007 the Board issued order setting aside a November 8, 2006 Office nonmerit decision.¹ The case was remanded for the

¹ Docket No. 07-409 (issued May 21, 2007).

Office to reopen the claim and issue an appropriate decision on the merits in order to preserve appellant's appeal right. In a July 24, 2008 decision, the Board affirmed a July 18, 2007 Office decision denying her claim for a recurrence of disability beginning January 29, 2003 causally related to the accepted November 29, 1999 employment injury.² The facts as set forth in the Board's decision are incorporated herein by reference.³

On August 24, 2009 appellant filed a claim for a recurrence of disability beginning January 10, 2009. She alleged that while walking to her car her left knee gave out and she fell to the ground. The employing establishment controverted her claim.

By letter dated October 22, 2009, the Office advised appellant as to the medical and factual evidence required to support a recurrence claim. No evidence was received from appellant.

By decision dated December 8, 2009, the Office denied appellant's claim for a recurrence of disability beginning January 10, 2009.

LEGAL PRECEDENT

The Office's implementing regulations define a recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴ If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken, and an appropriate new claim should be filed.⁵

ANALYSIS

The Office accepted appellant's claim for left knee strain. On August 24, 2009 appellant filed a recurrence of disability claim beginning January 10, 2009 due to her November 29, 1999 employment injury. She related that she fell to the ground when her knee gave out while walking to her car. On October 22, 2009 the Office requested that appellant provide medical evidence in support of her claim. Appellant did not respond to the Office's request. She did not submit any medical evidence to support her claim.

² Docket No. 07-2298 (issued July 24, 2008).

³ On November 29, 1999 appellant, then a 56-year-old receptionist, filed a traumatic injury claim alleging that on that date she injured her knee when she tripped while walking. The Office accepted the claim for left knee sprain. Appellant was released to limited-duty work effective January 4, 2000. On December 1, 2003 the employing establishment removed her from her position as information receptionist effective December 8, 2003 due to her failure to maintain a regular work schedule.

⁴ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *Phillip L. Barnes*, 55 ECAB 426 (2004).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997), *Donald T. Pippin*, 54 ECAB 631 (2003).

The Board finds that appellant has not established that she sustained a recurrence of disability on January 10, 2009 causally related to her accepted employment injury. The Office's procedure manual provides that it is the employee's burden to submit factual and medical evidence in support of the claimed recurrence.⁶ It is not assumed that any subsequent incapacity involving the injured part of the body is the result of the original injury solely because the original injury was accepted.⁷ The procedure manual further states that medical evidence includes a description of objective findings, reasoned medical opinion supporting causal relationship and a discussion of any similar preexisting or intervening condition affecting the same part of the body.⁸ Appellant did not submit any medical evidence prior to the Office's December 8, 2009 decision finding that she had not established a recurrence of disability. By letter dated October 22, 2009, the Office advised her of the evidence necessary to establish a recurrence of disability; however, she did not provide additional evidence. As appellant did not submit medical evidence substantiating that she was disabled beginning January 10, 2009 due to her accepted employment injury, the Office properly determined that she did not establish a recurrence of disability.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability or a medical condition on or after January 10, 2009 causally related to her accepted left knee sprain of November 29, 1999.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.7(b)(1) (October 2009). *See also B.B.*, 61 ECAB ____ (Docket No. 09-1858, issued April 16, 2010); *Mary A. Ceglia*, 55 ECAB 626 (2004) (it is appellant's burden to submit rationalized medical evidence from a physician who concludes that the condition is causally related to the employment injury).

⁷ *Id.*

⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 8, 2009 is affirmed.

Issued: January 14, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board