

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

S.A., Appellant)	
)	
and)	Docket No. 10-1894
)	Issued: June 6, 2011
DEPARTMENT OF THE ARMY, UNIVERSITY)	
OF CENTRAL MISSOURI, Warrensberg, MO,)	
Employer)	
)	

Appearances:
Lyle N. Adams, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 13, 2010 appellant filed a timely appeal from a January 19, 2010 merit decision of the Office of Workers' Compensation Programs denying her claim. Pursuant to the Federal Employees' Compensation Act¹ and 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 a left knee injury on September 12, 2007 as alleged.

On appeal, appellant contends that her attending physician submitted sufficient medical opinion to establish her claim for compensation.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 21, 2008 appellant, then a 19-year-old Army Reserve Officer Training Corps (ROTC) cadet, filed a traumatic injury claim alleging that on October 15, 2007 during swim proficiency training with 50 other cadets, she was kicked on the side of her left knee by another cadet. She noted prior surgery on the left knee in July 2007. Appellant's executive officer advised that appellant was in the performance of duty at the time of the incident.

In a July 29, 2008 letter, the Office requested additional factual and medical evidence from appellant. This included an opinion from appellant's physician which addressed how the claimed incident caused an injury. Appellant was accorded 30 days to provide the requested information.

In a July 29, 2008 letter, the Office also requested that the employing establishment submit a "line of duty" determination within 30 days, which contained a brief description of how, where and when the injury occurred, whether the injury occurred as a result of practical military training and the appropriate statutory citation in support of the determination. No additional evidence was received.

By decision dated September 3, 2008, the Office denied appellant's claim. It found that fact of injury had not been established as there was no established medical diagnosis and the record lacked a line of duty statement linking the claimed incident to the performance of duty.

On February 28, 2009 appellant requested reconsideration. In a December 10, 2008 statement, Gareth S. Young, LTC, SC, Battalion Commander, opined appellant was in the line of duty at the time of the incident. He confirmed that appellant was injured on October 15, 2007 when kicked in the left knee by another cadet during swim proficiency training. Appellant complained of soreness upon exiting the pool but was able to walk after resting a few moments. Lt. Col. Young notes that she was reevaluated by her physician afterwards and was advised that she needed an anterior cruciate ligament (ACL) repair, which took place in December 2007.

Medical evidence from the Munson Army Health Center was received. In a September 13, 2007 telephone consult regarding a reinjury of ACL repair, Dr. Jeffrey A. Dean, a Board-certified orthopedic surgeon, reported appellant's father called to advise that appellant was kicked in the knee while swimming and had some swelling and clicking. In a September 14, 2007 report, he noted that appellant was military service ROTC cadet and the reason for her visit was left knee pain. Dr. Dean reported that appellant's left knee was reinjured two days earlier when it was kicked while she was swimming. He reported appellant felt immediate pain and swelling. Appellant felt a pop when injured and had pain laterally in the knee. On examination, the left knee had swelling, tenderness to palpation and abnormal flexion. The anterior drawer sign was present and Lachman's test showed one plane of anterior instability. Dr. Dean stated that x-rays of the knee were negative for new fractures. He provided an assessment of joint pain in the knee and a likely bone bruise that was complicated by a loose ACL graft. Dr. Dean discussed with appellant "knee pain from new injury on top of old instability." He noted that she previously had surgery on the same knee in July 2007. The possibility of an ACL revision was discussed.

On December 17, 2007 appellant underwent a preoperative orthopedic examination with Robert W. Grimes, a physician's assistant. She was seen in follow-up for internal derangement of the left knee, medial meniscus and old disruption of ACL.

By decision dated May 18, 2009, the Office denied modification of its September 3, 2008 decision finding that the medical evidence did not establish a diagnosis due to the October 15, 2007 incident.

On December 30, 2009 appellant requested reconsideration. She clarified that she sustained her left knee injury on September 12, 2007, not October 15, 2007. Appellant stated that there were two training sessions and that she had attended training on September 12, 2007. She asserted that the medical evidence supported her claim. In a June 26, 2009 letter, Major Craig A. Chandler, executive officer, noted that there was some confusion regarding the date of injury. He verified appellant was injured during water safety training on September 12, 2007. Major Chandler noted that the date of October 15, 2007 was the second training session and was incorrectly listed.

The full report of appellant's preoperative orthopedic examination from December 17, 2007 was provided. Mr. Grimes, physician's assistant, provided an assessment of left knee sprain ACL.

By decision dated January 19, 2010, the Office denied modification of the May 18, 2009 decision. The date of the incident was corrected to reflect September 12, 2007 but the Office found that the medical evidence was insufficient to support causal relation.

LEGAL PRECEDENT

An employee seeking benefits under the Act 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 filed within the applicable time limitation 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.³ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁴

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.⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation benefits, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.⁷

ANALYSIS

Appellant alleged that she sustained an injury to her left knee during swim proficiency training on September 12, 2007 when she was kicked in the side of the left knee by another cadet. She initially listed the date of injury as October 15, 2007 but subsequently clarified that it occurred on September 12, 2007, the date the first water safety training was conducted. In a June 26, 2009 letter, Major Chandler verified that appellant was in the line of duty when she was engaged in water safety training on September 12, 2007.⁸ The Board finds that the evidence supports that the September 12, 2007 incident occurred as alleged.

The Board also finds the medical evidence requires further development. It is noted that appellant has a preexisting left knee condition for which an ACL graft was provided. After the accepted September 12, 2007 incident, appellant's father called Dr. Dean and appellant was seen on September 14, 2007, two days after the accepted incident. In a September 13, 2007 record of a telephone consultation, Dr. Dean noted the knee kicking incident and appellant's symptoms of swelling and clicking. In a September 14, 2007 treatment note, he noted that appellant's left knee had been reinjured two days earlier when it was kicked while she was swimming. Dr. Dean

⁴ *Id.*

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁷ *William J. Cantrell*, 34 ECAB 1223 (1983).

⁸ Regarding line of duty determinations unique to ROTC claims, see *Dustin E. Marlett*, 54 ECAB 602 (2003). Office procedures contemplate that, if line of duty is established, fact of injury and causal relationship will be determined as in other claims under the Act. See Federal (FECA) Procedure Manual, Part 4 -- Special Case Procedures, *Reserve Officers Training Corps*, Chapter 4.600.6(a) (May 1996).

reported the history of injury, examined appellant and advised that she had findings of swelling, tenderness, abnormal flexion and a possible bone bruise, complicated by a loose ACL graft. He provided an assessment of joint pain from the new injury and a likely bone bruise that was complicated by a loose ACL graft. Dr. Dean discussed appellant's knee pain from the new injury on top of old instability. While his reports do not establish causal relationship, they provide an accurate history of the incident and are sufficiently consistent and detailed to warrant further development by the Office.⁹ The Board notes that the Office did not undertake any medical development in this case, such as referring appellant to a second opinion physician or to clarify Dr. Dean's reports and her December 17, 2007 reconstructive ACL left knee surgery.

The December 17, 2007 treatment note from Mr. Grimes, a physician's assistant, is of no probative medical value as the Board has held that a physician's assistant is not competent to render a medical opinion under the Act.¹⁰

On remand of the case, the Office shall prepare a statement of accepted facts and refer appellant to an appropriate Board-certified specialist to obtain a detailed, well-rationalized opinion regarding whether the September 12, 2007 incident caused or aggravated a left knee condition and contributed to the need for appellant's December 17, 2007 surgery. Following this and any other development that the Office deems necessary for a proper adjudication of the case, the Office shall issue an appropriate decision.

CONCLUSION

The Board finds the case is not in posture for decision as further medical development is required.

⁹ *John J. Carlone*, 41 ECAB 345, 358 (1989).

¹⁰ *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the Act); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated January 19, 2010 is set aside and the case remanded for further action consistent with this decision.

Issued: June 6, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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