United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 10-2314**
	)	**Issued: June 9, 2011**
DEPARTMENT OF VETERANS AFFAIRS, CLEMENT J. ZABLOCKI MEDICAL CENTER, Milwaukee, WI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 10, 2010 appellant filed a timely appeal from an August 19, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] 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 met her burden of proof to establish that her bilateral knee condition was causally related to a July 30, 1999 employment incident.

FACTUAL HISTORY

On June 9, 2010 appellant, then a 56-year-old food service worker, filed an occupational disease claim alleging that she sustained a knee injury as a result of falling on the sidewalk in

[1] 5 U.S.C. § 8101 *et seq.*

front of the Veterans Affairs (VA) building entrance. She stated that she first became aware of her condition and realized that it was related to her employment on July 30, 1999. Appellant explained that she did not file a claim for compensation within 30 days because she was on pain medication for other medical conditions, which masked her knee pain.

Appellant provided a traumatic injury claim form submitted on August 5, 1999 alleging that on July 30, 1999 she sustained a contusion to both knees when she fell on the ground while walking into building 111 to report for duty. In a June 7, 2010 supplemental statement, she explained that in 1999 she fell down on both her knees as she was walking into the front door of the VA office. Since then, appellant's knee swelled up from time to time, but in March 2010 her knee swelled up and the pain no longer went away with medication.

In a June 9, 2010 accident incident report, the employing establishment reported that appellant sustained a contusion in both her knees and complained of significant swelling and pain as a result of a fall. It also stated that she submitted a July 30, 1999 accident report documenting a fall at the front entrance of building 111.

In a June 7, 2010 medical report, Dr. Patricia Hago, a Board-certified family practitioner, stated that appellant complained of persistent and worsening pain over her left knee since 1999 when she fell down at work. Appellant reported that it was difficult to stand up for a long time, support her weight with her left leg and to get up from a seated position. Upon examination, Dr. Hago observed that appellant's left knee was tender on the suprapatellar, but had no instability, crepitus, or erythema. Her anterior drawer was negative and showed very mild edema/effusion over the superior border of the patella. Appellant was diagnosed with left knee pain and hypertension. Dr. Hago also provided a June 7, 2010 work excuse slip confirming that appellant was seen that same day for left knee pain secondary to a fall and noted that appellant should wear a knee brace during work hours.

In a June 10, 2010 magnetic resonance imaging (MRI) scan report, Dr. Eric Dorn, a Board-certified radiologist, observed an oblique undersurface tear in the posterior horn of appellant's medial meniscus and a horizontal tear throughout the lateral meniscus. He also noted a moderate patellofemoral effusion, small mild edema and fluid in the anterior fat pad and a small chondral fissure in the central patella. Dr. Dorn diagnosed appellant with a medial and lateral meniscus tear.

On June 18, 2010 the Office advised appellant that the evidence submitted was insufficient to establish her claim and requested additional information. It specifically requested for a comprehensive medical report from her treating physician including a history of her condition, symptoms, results of examinations and tests, a firm diagnosis, treatment provided, effect of treatment, and a physician's opinion, with medical reasons, explaining how the diagnosed condition was caused or aggravated by her employment.

In a July 1, 2010 signed personal statement, appellant noted that she reported her July 30, 1999 injury to her supervisor but was not sure if witness reports were completed. She further described the employment incident. Appellant came in the building and went down the stairs to her locker. When she returned her knees were bleeding and she sat down with the program manager. Appellant stated that she took pain medication to alleviate her symptoms when her

knees swelled up from time to time, but in March 2010 she noticed that the pain and stiffness were not going away. After she underwent an MRI scan, her doctor recommended surgery.

In a decision dated August 19, 2010, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that her knee condition was causally related to her federal employment. It determined that, although the record demonstrated that the employment incident occurred and provided a diagnosis, the medical evidence failed to establish that appellant's condition resulted from the accepted work event.

LEGAL PRECEDENT

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative and substantial evidence[2] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[3] 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.[4]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[5] 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 specified employment factors or incident.[6] 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.[7] The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.[8]

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[2] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[3] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

[4] *Michael E. Smith*, 50 ECAB 313 (1999); *D.B.*, Docket No. 10-1495 (issued March 9, 2011).

[5] *D.I.*, 59 ECAB 158 (2007); *Roy L. Humphrey*, 57 ECAB 238 (2005); *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *W.D.*, Docket No. 09-658 (issued October 22, 2009).

[6] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *B.B.*, 59 ECAB 234 (2007); *D.S.*, Docket No. 09-860 (issued November 2, 2009).

[8] *Patricia J. Bolleter*, 40 ECAB 373 (1988).

A traumatic injury is defined as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to the time and place of occurrence and member or function of the body affected.[9] An occupational disease or illness is defined as a condition produced by the work environment over a period longer than a single workday or shift.[10]

ANALYSIS

Appellant filed an occupational disease claim on June 9, 2010 claiming that she first became aware of her knee condition and realized it resulted from her employment on July 30, 1999. She stated that she fell on the sidewalk at the front entrance of her work and experienced increased swelling and pain in both her knees since that incident. Although appellant indicated that her condition was an occupational disease by filing a Form CA-2, she described a traumatic injury in her claim and subsequent narrative statements. Thus, the Board will treat this claim as a traumatic injury case because it appears that she is alleging an injury resulting from a single occurrence within a single workday.[11]

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a knee injury on July 30, 1999. The Office accepted that the employment incident occurred as alleged and that she sustained a knee condition. The medical evidence, however, fails to establish that appellant's knee condition was causally related to the accepted incident.

In a June 7, 2010 medical report and work excuse slip, Dr. Hago examined appellant for left knee pain secondary to a fall at work. She stated that appellant's pain began in 1999 after she fell down at work. The Board finds however that Dr. Hago's report is of limited probative value. Dr. Hago did not relate a significant history of injury as she did not describe any details of appellant's fall, such as whether she actually fell on her knee or whether she fell on steps, concrete or carpet. Upon examination, she observed that appellant's left knee was tender on the suprapatellar, but had no instability, crepitus or erythema. Dr. Hago diagnosed appellant with a history of trauma and left knee pain. Pain, however, is a symptom, not a compensable medical diagnosis.[12] Thus, Dr. Hago's report fails to provide a diagnosed condition sufficient to meet appellant's burden of proof. Furthermore, while she implied that appellant's knee pain resulted from a fall at work, she did not provide any medical rationale explaining how falling at work, some eleven years previously, resulted in the current knee condition. Such explanation is especially important as there is no evidence of record documenting appellant's condition since 1999. Medical evidence is of limited probative value on the issue of causal relationship if it

[9] 20 C.F.R. § 10.5(ee).

[10] *Id.* at § 10.5(q).

[11] *See S.H.*, Docket No. 10-1697 (issued April 15, 2011).

[12] *Robert Broome*, 55 ECAB 339, 342 (2004).

contains a conclusion regarding causal relationship which is unsupported by medical rationale.[13] Thus, Dr. Hago's report fails to establish causal relationship.

Appellant also submitted a June 10, 2010 MRI scan report interpreted by Dr. Dorn who observed an oblique undersurface tear in the posterior horn of appellant's medial meniscus and a horizontal tear throughout the lateral meniscus. Appellant was diagnosed with a medial and lateral meniscus tear. While Dr. Dorn's report provides a firm medical diagnosis, it does not offer any opinion regarding the cause of appellant's knee condition. The Board has held that 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.[14]

On appeal, appellant contends that she provided sufficient medical evidence from Dr. Hago and Dr. Shivaram, a Board-certified orthopedic surgeon, to support causal relationship. As previously noted, however, Dr. Hago's medical report is of diminished probative value to establish causal relationship. The Board's jurisdiction is limited to evidence that was before the Office at the time it issued its final decision. The Board may not consider Dr. Shivaram's medical report on appeal.[15] As appellant failed to submit sufficient probative medical evidence explaining how her knee condition was causally related to the July 30, 1999 employment incident, she did not meet her burden of proof to establish her claim.

Appellant may submit new evidence or argument with a written request for reconsideration to the Office within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an injury on July 30, 1999 as alleged.

[13] *Albert C. Brown*, 52 ECAB 152 (2000); *T.M.*, Docket No. 08-975 (issued February 6, 2009).

[14] *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997).

[15] *Sandra D. Pruitt*, 57 ECAB 126 (2005); *see also* 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 9, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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