

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

T.P., Appellant)

and)

DEPARTMENT OF HEALTH & HUMAN)
SERVICES, SOCIAL SECURITY)
ADMINISTRATION, Philadelphia, PA,)
Employer)

_____)

**Docket No. 10-1307
Issued: March 3, 2011**

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 9, 2010 appellant filed a timely appeal from an October 15, 2009 decision of the Office of Workers' Compensation Programs denying her claim for an employment-related injury. 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 an injury in the performance of duty on February 26, 2009, as alleged.

On appeal, appellant contends that the fall hastened her need for a total knee replacement.

FACTUAL HISTORY

On March 10, 2009 appellant, then a 59-year-old training support assistant, filed a traumatic injury claim alleging that on February 26, 2009 she bruised her right arm and both

knees and experience pain from her left shoulder down to her foot when she tripped and fell on carpet.

Appellant submitted medical evidence and disability notes from Dr. Mark J. Capkin, a treating Board-certified internist.¹ In reports dated March 5 and 17, 2009, Dr. Capkin advised that she was unable to work due to illness from March 3 to 6 and March 17, 2009. In an April 1, 2009 attending physician's report (Form CA-20), he diagnosed knee osteoarthritis. Dr. Capkin checked "yes" to the question of whether the condition was caused or aggravated by the February 26, 2009 fall at work. He explained that appellant's knee symptoms worsened following the fall.

In an April 8, 2009 report, Dr. Capkin opined that appellant's preexisting bilateral knee degenerative arthritis was aggravated by her fall on February 26, 2009. He noted that, following her fall, she had bilateral knee pain to a degree she never had before. Dr. Capkin provided dates of total disability following the injury.

In an April 8, 2009 duty status report (Form CA-17), Dr. Capkin diagnosed bilateral knee pain and osteoarthritis. He described the February 26, 2009 employment injury when appellant tripped, fell and hit a table which bruised her right arm and her knees hit the floor. Dr. Capkin released her to work with restrictions on March 10, 2009.

On April 22, 2009 Dr. Capkin diagnosed chronic knee pain due to degenerative arthritis. He stated that as a result of the February 26, 2009 employment incident she may be required to be off work due to severe knee pain for varying lengths of time. Dr. Capkin noted that the knee pain prevented her from moving about and was unpredictable as to when it would occur. On a July 19, 2009 report he reiterated that appellant had severe bilateral knee pain. Dr. Capkin related that appellant's left knee condition worsened following her February 26, 2009 injury and that knee replacement surgery would probably be required. A review of a magnetic resonance imaging (MRI) scan showed severe tricompartmental degenerative changes, lateral and medial meniscal maceration and a meniscal tear.

In a letter dated August 31, 2009, the Office advised appellant as to the medical and factual evidence required to support her claim.

In a July 27, 2009 report, Dr. Robert E. Booth, Jr., a treating Board-certified orthopedic surgeon, reported that appellant's left knee degenerative arthritis had been aggravated by a fall five months prior. On August 19, 2009 he treated her for bilateral severe knee pain and concluded that she was totally disabled from August 18 to 21, 2009.

In a September 18, 2009 report, Dr. Booth related that appellant had fallen in a gym at work and on carpet. He stated that she had a prior total right knee arthroplasty on June 14, 2001 and total right knee revisional arthroplasty on December 27, 2005 and that "her falls precipitated

¹ The Board notes that the Office issued a Form CA-16. A properly executed CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. See *Elaine M. Kreyborg*, 41 ECAB 256 (1989). The CA-16 form issued to appellant authorized examination and treatment and was therefore properly executed.

not only her original need for surgery but also for the revision.” In reports of September 22, 2009, Dr. Booth related that the falls he mentioned in his prior report occurred on April 13, 1992 and June 30, 1993 and that a third fall occurred on February 26, 2009 when appellant fell on carpet. He diagnosed advanced left knee degenerative arthritis and right knee painful total revision. Dr. Booth opined that appellant’s falls were the cause of her original surgery as well as the revision and that her preexisting arthritic condition had been aggravated such that surgery was required. He stated that she was totally disabled from September 21 through 23, 2009 due to incapacitating knee pain.

By decision dated October 15, 2009, the Office denied the claim because the evidence of record did not demonstrate that the established employment incident caused a medically-diagnosed condition.²

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act³ has the burden of establishing the essential elements of his 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, that an injury was sustained while 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.⁴ 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.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁶ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

² The Board notes that, following the October 15, 2009 decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. See 20 C.F.R. § 501.2(c)(1); *M.B.*, 60 ECAB ____ (Docket No. 09-176, issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

³ 5 U.S.C. §§ 8101-8193.

⁴ *C.S.*, 60 ECAB ____ (Docket No. 08-1585, issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *B.F.*, 60 ECAB ____ (Docket No. 09-60, issued March 17, 2009); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *D.B.*, 58 ECAB 464 (2007); *Paul Foster*, 56 ECAB 208 (2004).

⁸ *C.B.*, 60 ECAB ____ (Docket No. 08-1583, issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁹ 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 compensable employment factors.¹⁰ 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.¹¹

ANALYSIS

The Office accepted the February 26, 2009 employment incident in which appellant fell at work. Appellant's burden is to establish that this employment incident caused a medically-diagnosed injury. Causal relationship is a medical issue that can only be proven by probative medical opinion evidence. The Board finds that appellant has not established that she sustained an injury in the performance of duty on February 26, 2009, as alleged.

Appellant submitted medical evidence from her treating physicians, Drs. Booth and Capkin. The reports from the physicians are of limited probative value on causal relationship because they did not adequately explain how the established employment incident aggravated her preexisting condition.¹² In reports dated April 8 to July 19, 2009, Dr. Capkin diagnosed bilateral knee pain with osteoarthritis, chronic knee pain due to degenerative arthritis and severe bilateral knee pain. He also opined that the February 26, 2009 fall aggravated appellant's preexisting bilateral degenerative knee arthritis and that her knee symptoms worsened following the fall. On April 8, 2009 Dr. Capkin related that she experienced bilateral knee pain to a degree not felt prior to her fall. Initially, the Board notes that pain is generally a symptom not a firm medical diagnosis.¹³ Dr. Capkin did not explain how the February 26, 2009 fall aggravated appellant's condition beyond noting increased bilateral knee pain and a worsening of her symptoms following the fall. He provided no physical findings in his reports other than reviewing an MRI scan.

Dr. Booth's conclusion in his several reports that appellant's fall on February 26, 2009 aggravated her preexisting degenerative knee arthritis thereby necessitating surgical intervention contain no explanation or supporting rationale for his conclusion. He does not explain how the mechanism of the fall on February 26, 2009 aggravated the preexisting condition and required revisional surgery.

⁹ *Y.J.*, 60 ECAB ____ (Docket No. 08-1167, issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *Michael S. Mina*, 57 ECAB 379 (2006).

¹⁰ *J.J.*, 60 ECAB ____ (Docket No. 09-27, issued February 10, 2009); *Sedi L. Graham*, 57 ECAB 494 (2006).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹² See *F.T.*, 61 ECAB ____ (Docket No. 09-919, issued December 7, 2009); *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

¹³ *Robert Broome*, 55 ECAB 339 (2004).

The weight of a medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹⁴ Neither Dr. Capkin nor Dr. Booth provided a report which contained medical rational supporting their conclusion that appellant's bilateral knee condition had been aggravated by the February 26, 2009 employment incident. Thus, they are insufficient to support her burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation.¹⁵ Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.¹⁶ The fact that a condition manifests itself or worsens during a period of employment¹⁷ or that work activities produce symptoms revelatory of an underlying condition¹⁸ does not raise an inference of causal relationship between a claimed condition and an employment incident.

Because appellant has not submitted competent medical opinion evidence containing a reasoned discussion of causal relationship, one that, soundly explains how the accepted employment incident caused or aggravated a firmly diagnosed medical condition, the Board finds that she has not established the essential element of causal relationship.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty on February 26, 2009, causally related to her employment.

¹⁴ *C.M.*, 61 ECAB ___ (Docket No. 09-1268, issued January 22, 2010); *Michael S. Mina*, 57 ECAB 379 (2006).

¹⁵ *E.J.*, 61 ECAB ___ (Docket No. 09-1481, issued February 19, 2010); *D.D.*, 57 ECAB 734 (2006); *Paul E. Thams*, 56 ECAB 503 (2005).

¹⁶ *W.D.*, 61 ECAB ___ (Docket No. 09-658, issued October 22, 2009); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁷ *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393 (1960).

¹⁸ *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155 (1960).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 15, 2009 is affirmed.

Issued: March 3, 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