United States Department of Labor
Employees' Compensation Appeals Board

M.F., Appellant	)	
and	)	**Docket No. 10-1671**
	)	**Issued: March 15, 2011**
DEPARTMENT OF THE AIR FORCE, AIR LOGISTICS CENTER, ROBINS AIR FORCE BASE, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 9, 2010 appellant filed a timely appeal from a January 14, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on October 15, 2008.

FACTUAL HISTORY

On November 4, 2008 appellant, then a 63-year-old budget technician, filed a traumatic injury claim alleging that she sustained bruising and swelling of the knees and hands on October 15, 2008 when her shoe clung to the floor and caused her to fall in a stairwell. She did not stop work.

A December 29, 2008 left knee magnetic resonance imaging (MRI) scan report from Dr. Samuel Cort, a Board-certified diagnostic radiologist, indicated joint effusion with Baker's cyst. Findings also suggested possible meniscal cyst or degenerative changes involving the medial meniscus. Dr. Cort noted a history of instability with a possible torn medial collateral ligament.

On September 2, 2009 the Office informed appellant that the evidence was insufficient and advised her about the evidence needed to establish her claim.[1]

A February 1, 2008 left knee MRI scan report from Dr. David C. Rosenberg, a Board-certified diagnostic radiologist, demonstrated tears of the posterior root of the lateral meniscus and the posterior horn of the medial meniscus, loss of medial joint space height, small joint effusion and small popliteal cyst.[2]

In a January 8, 2009 report from Dr. William B. Wiley, a Board-certified orthopedic surgeon, appellant complained of bilateral knee pain. She denied any significant, preexisting medical problems. Dr. Wiley noted that appellant's symptoms stemmed from a fall on October 15, 2008 as she was ascending steps at the employing establishment. He examined appellant and observed mild inferior patellar pole tenderness on palpation. X-rays showed no abnormalities while the December 29, 2008 left knee MRI scan showed Baker's cyst and degenerative meniscus changes. Dr. Wiley diagnosed patellar tendinitis bilateral knees and commented that the condition was work related. He stated in a February 2, 2009 progress note that appellant exhibited some crepitation of the left patellofemoral joint on flexion and extension and diagnosed left knee patellofemoral chondromalacia and Baker's cyst. Dr. Wiley reported that her pain and swelling improved with physical therapy. A January 12, 2009 physical therapist form report noted that appellant experienced left knee pain since her fall at work on October 15, 2008.

In a September 22, 2009 report from Dr. Wiley, appellant complained of bilateral knee pain that was aggravated when she climbed the stairs at work. She remarked that the pain was worse in the left knee. On physical examination, Dr. Wiley observed crepitation of the bilateral patellofemoral joints on flexion and extension. He diagnosed bilateral patellofemoral chondromalacia, small Baker's cyst of the left knee and early degenerative joint disease of the right knee.

By decision dated October 14, 2009, the Office denied appellant's claim, finding the medical evidence insufficient to demonstrate causal relationship between the October 15, 2008 incident and her diagnosed condition.

Appellant requested reconsideration on November 7, 2009. She submitted a November 23, 2009 report from Dr. Wiley advising that she underwent a left knee arthroscopic partial medial meniscectomy and chondroplasty of the medial femoral condyle and patella on

[1] The Office noted that appellant's claim was not fully processed as it had been received as a simple and uncontroverted case resulting in minimal or no time lost from work and payment was approved for limited medical expenses without formal adjudication.

[2] The MRI scan report predates the alleged injury.

October 9, 2009. Dr. Wiley noted that appellant's fall on October 15, 2008 and her continuous stair climbing at work was consistent with the clinical findings and opined that these actions "could have caused an aggravation to a condition that was already present, within a reasonable degree of medical certainty."

By decision dated January 14, 2010, the Office denied modification of its October 14, 2009 decision on the grounds that the medical evidence was insufficient to establish appellant's claim.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,[4] including that she is an "employee" within the meaning of the Act and that she filed her claim within the applicable time limitation.[5] The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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.[8]

[3] 5 U.S.C. §§ 8101-8193.

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[5] *R.C.*, 59 ECAB 427 (2008).

[6] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[7] *T.H.*, 59 ECAB 388 (2008).

[8] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

The evidence supports that appellant's shoe clung to the floor and caused her to fall in a stairwell on October 15, 2008. However, appellant has not submitted sufficient medical evidence to establish that this employment incident caused or aggravated hand or knee injuries.

Dr. Wiley opined in his January 8, 2009 report that appellant's bilateral patellar tendinitis was related to the October 15, 2008 incident. He later detailed in his November 23, 2009 report that appellant's October 15, 2008 fall and her continuous stair climbing at work was consistent with his examination findings and "could have caused an aggravation to a condition that was already present, within a reasonable degree of medical certainty."[9] Dr. Wiley, however, did not provide any medical reasoning as to how the October 15, 2008 incident caused or aggravated the diagnosed condition. A medical opinion not fortified by medical rationale is of little probative value.[10] The need for medical reasoning is particularly important since Drs. Wiley and Cort pointed out that appellant had a preexisting degenerative condition.[11] Furthermore, Dr. Wiley's conclusion that the employment incident "could have caused an aggravation" was speculative.[12]

Dr. Wiley's February 2 and September 22, 2009 reports are also of diminished probative value as they offered no opinion regarding the cause of appellant's injury.[13] Finally, the January 12, 2009 physical therapist form lacks probative medical value because a physical therapist is not a physician under the Act.[14] Therefore, appellant failed to establish her claim.[15]

CONCLUSION

The Board finds that appellant failed to establish that she sustained a traumatic injury in the performance of duty on October 15, 2008.

---

[9] The Board notes that Dr. Wiley's opinion that appellant's condition developed over a period of time is more consistent with a claim for occupational disease rather than traumatic injury. *See* 20 C.F.R. § 10.5(q) & (ee).

[10] *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

[11] The Board notes that appellant previously denied any notable, preexisting medical problems in Dr. Wiley's January 8, 2009 report while Dr. Rosenberg's February 1, 2008 left knee MRI scan report revealed meniscal tearing, medial joint space height loss, effusion and a popliteal cyst. *See M.W.*, 57 ECAB 710 (2006) (medical conclusions based on an inaccurate or incomplete factual history are of diminished probative value).

[12] *Kathy A. Kelley*, 55 ECAB 206 (2004); *Thomas A. Faber*, 50 ECAB 566 (1999) (the use of speculative terms diminishes the probative value of medical opinion evidence).

[13] *See J.F.*, Docket No. 09-1061 (issued November 17, 2009).

[14] 5 U.S.C. § 8101(2); *Jennifer L. Sharp*, 48 ECAB 209 (1996). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).

[15] The Board notes that appellant submitted new medical evidence to the Office after issuance of its January 14, 2010 decision. She also submitted new evidence on appeal. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. Consequently, the new evidence submitted cannot be considered by the Board for the first time on appeal. *See* 20 C.F.R. § 501.2(c) Appellant, however, may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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