United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 10-1906**
	)	**Issued: May 17, 2011**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION MIAMI MEDICAL VETERANS CENTER, Miami, FL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 13, 2010 appellant filed a timely appeal from a June 17, 2010 decision of the Office of Workers' Compensation Programs denying her occupational disease claim. 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 established that she sustained chondromalacia of both knees and a right meniscal tear in the performance of duty.

On appeal, counsel asserted that appellant's speech is rapid and indistinct, causing coworkers and supervisors to misunderstand her remarks about the claimed knee injury. Counsel characterized the inconsistencies in the evidence as minor, noting that there was no medical

[1] 5 U.S.C. § 8101 *et seq.*

evidence refuting that the claimed exposures occurred as alleged. He argued that the Office improperly denied appellant's claim as she did not establish a traumatic injury although she filed an occupational disease claim. Counsel cited to the Board's decision in *E.J.*,[2] where the Board remanded the case to the Office as the medical evidence was uncontroverted and of sufficient quality to require further development.

FACTUAL HISTORY

On October 15, 2009 appellant, then a 53-year-old supply technician, filed an occupational disease claim (Form CA-2) claiming that, on or about July 27, 2009, she sustained bilateral patellar chondromalacia, a right meniscal tear and developed a limp due to kneeling on a concrete floor while scanning merchandise in an engineering supply area.

In an October 22, 2009 letter, the Office advised appellant of the type of additional evidence needed to establish her claim, including a detailed description of the identified employment factors and a rationalized statement from her attending physician explaining how and why those factors would cause the claimed condition. It noted that, although she filed an occupational disease claim, she apparently claimed a July 27, 2009 traumatic incident. Appellant was afforded 30 days to submit additional evidence.

Appellant submitted an August 13, 2009 report from Dr. Eric T. Shapiro, an attending Board-certified orthopedic surgeon, who related her complaints of bilateral knee pain which she attributed to repetitive kneeling, bending and squatting at work during the past 24 years. On examination Dr. Shapiro observed tenderness over the medial joint line bilaterally without instability. He obtained x-rays showing a small osteophyte in each knee without gross arthritic changes. Dr. Shapiro diagnosed probable bilateral meniscal pathology. He injected appellant's right knee. Appellant's condition was unchanged on August 24 and 31, 2009 examinations.

In September 21, 2009 reports, Dr. Shapiro noted that appellant's job as a supply technician during the past 24 years required bending and squatting, causing "increased pressure on her knees, as well as the patellofemoral regions.… [Appellant] kne[lt] on concrete floors to scan the bar codes" and lifted packages up to 50 pounds. A magnetic resonance imaging scan showed a small medial meniscal tear in the right knee. Dr. Shapiro opined that "[w]ithin a degree of medical certainty these problems are job related."

By decision dated December 9, 2009, the Office denied appellant's claim on the grounds that fact of injury was not established due to factual inconsistencies in the evidence. It found that she submitted insufficient evidence to establish either a July 27, 2009 traumatic incident or an occupational condition.

In a December 15, 2009 letter, the employing establishment controverted appellant's claim. In a November 12, 2009 statement, an employing establishment official asserted that she mentioned at an August 10, 2009 meeting that her leg bothered her that weekend because she was "getting old and her body was falling apart." Appellant declined to visit employee health,

[2] *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

stating that she would see her private physician in a few days. The supervisor confirmed that appellant's duties required bending and lifting.

In a letter dated and postmarked January 5, 2010, appellant requested a telephonic hearing, held April 6, 2010. At the hearing, she explained that, on the morning of July 27, 2009, she arrived for her shift at 6:50 a.m., 10 minutes before her scheduled tour of duty, but did not begin scanning merchandise until after 7:00 a.m. Appellant knelt on a concrete floor in the supply area to scan merchandise on low shelves. When she arose, she experienced pain in both knees and began to limp. Appellant reported the knee pain to her supervisors, who thought she injured herself during the weekend as she complained of pain so early on a Monday morning. She sought care a few days later from her primary physician, who referred her to Dr. Shapiro. Appellant asserted that her condition was due both to repetitive bending and squatting at work over the past 24 years and also to kneeling on July 27, 2009.

Following the hearing, the employing establishment submitted four coworker statements asserting that, on August 10, 2009, appellant was limping after a meeting and stated that her knee or leg bothered her the previous weekend. In a May 14, 2010 statement, it asserted that she did not report her injury until August 10, 2009. The employing establishment confirmed that appellant was required to scan merchandise and that some items were on shelves six inches from the floor. It disputed that she scanned merchandise on July 27, 2009 as another division of the agency claimed there was no record of any employee scanning merchandise on that date.

In a June 3, 2010 letter, counsel offered that there was no record of appellant scanning merchandise on July 27, 2009 as she forgot to upload her scan gun to her computer or may have been instructed not to upload the data until several days later.

Appellant submitted a January 21, 2010 report from Dr. Shapiro, noting that she underwent partial lateral and medial meniscectomies in the right knee. In a June 8, 2010 letter, Dr. Shapiro opined that there was a "high probability" that repetitive kneeling and squatting at work since 1986 caused a meniscal tear in the right knee and chondromalacia in the left knee. Appellant sustained an exacerbation at the end of July 2009, resulting in a partial right lateral meniscectomy on December 4, 2009.

By decision dated and finalized June 17, 2010, an Office hearing representative affirmed its December 9, 2009 decision, finding that fact of injury was not established. The hearing representative found that conflicting accounts of events and appellant's delay in filing her claim created doubt that she sustained the claimed knee injuries at the time, place and in the manner alleged.

LEGAL PRECEDENT

An employee seeking benefits under the Act[3] 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; that an injury was sustained while in the performance of duty as alleged; and that any

[3] 5 U.S.C. §§ 8101-8193.

disability 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]

An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift.[6] To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. 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 medial 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.[7]

ANALYSIS

Appellant filed an occupational disease claim (Form CA-2) asserting that she sustained chondromalacia in both knees and a right meniscal tear due to kneeling on a concrete floor on July 27, 2009. She later clarified that she filed a CA-2 form because she believed that repetitive squatting and kneeling at work over a 24-year period caused her condition, which was exacerbated by kneeling on July 27, 2009. The Office denied the claim on the grounds that appellant submitted insufficient evidence to establish either an occupational condition or a July 27, 2009 traumatic injury. The Board finds, however, that the case requires further development regarding whether she sustained an occupational condition in the performance of duty.

Appellant's October 15, 2009 claim form intermingled elements of both occupational disease, a condition arising from work factors occurring over more than one workday or shift,[8] and traumatic injury, a condition of the body caused by an incident or incidents within a single

[4] *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[6] 20 C.F.R. § 10.5(q).

[7] *Solomon Polen*, 51 ECAB 341 (2000).

[8] 20 C.F.R. § 10.5(q).

workday or shift.[9] However, during the April 6, 2010 hearing, she clarified that she attributed her bilateral knee condition, in part, to repetitive squatting and bending at work over a 24-year period. Appellant's statements, as well as her selection of a Form CA-2, demonstrate that she claimed an occupational disease.

Appellant also submitted evidence corroborating her exposure to the identified work factors. Employing establishment supervisors confirmed that her job required repetitive lifting and bending, as well as scanning merchandise on shelves six inches from the floor. The Board finds that these supervisory statements are sufficient to establish appellant's account of these events as factual. The Board notes that the coworker statements regarding her remarks after an August 10, 2009 meeting or that the lack of July 27, 2009 scanning records for any employee, do not disprove that she was required to scan merchandise on low shelves, lift and bend during the prior 24 years.

Additionally, appellant submitted reports from Dr. Shapiro, an attending Board-certified orthopedic surgeon, supporting a causal relationship between work factors and the claimed bilateral knee conditions. He opined on September 21, 2009 that repetitive bending, lifting, kneeling and squatting at work during the past 24 years caused increased pressure on the knees, resulting in a right meniscal tear "[w]ithin a degree of medical certainty." In a June 8, 2010 letter, Dr. Shapiro reiterated that there was a "high probability" that repetitive kneeling and squatting at work since 1986 caused a meniscal tear in the right knee requiring a December 4, 2009 meniscectomy, as well as chondromalacia in the left knee.

Although Dr. Shapiro's opinion is not sufficiently rationalized[10] to meet appellant's burden of proof in establishing her claim, it strongly supports causal relationship. It is therefore sufficient to require further development of the case by the Office.[11] The case will be remanded to the Office for preparation of a statement of accepted facts concerning appellant's working conditions and referral of the matter to an appropriate medical specialist, consistent with Office procedures, to determine whether she developed chondromalacia of both knees and a right meniscal tear as a result of performing her employment duties. Following this and any other development deemed necessary, the Office shall issue an appropriate decision in the case.

On appeal, counsel asserted that appellant's supervisors and coworkers may have misunderstood her remarks about the claimed knee injuries. As stated, the coworker statements regarding her comments do not disprove that she was exposed to the identified work factors. Counsel characterized the inconsistencies in the evidence as minor, noting that there was no medical evidence refuting that the claimed exposures occurred as alleged. As stated, the medical evidence tends to support causal relationship. Counsel also argued that the Office improperly denied appellant's claim as she did not establish a traumatic injury although she filed an occupational disease claim. As stated, appellant filed an occupational disease claim and the case

[9] *Id*. at § 10.5(ee).

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

[11] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

will be remanded for further development on that issue. The Board's decision to remand a case to the Office in the matter of *E.J.*[12] is similar to the circumstances of this case.

CONCLUSION

The Board finds that the case is not in posture for a decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 17, 2010 is set aside and the case remanded for additional development consistent with this decision.

Issued: May 17, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[12] *Supra* note 2.