

FACTUAL HISTORY

This case was previously before the Board.³ On June 14, 2007 appellant, then a 41-year-old former rural carrier, filed a claim (Form CA-2) for an employment-related left lower extremity injury that reportedly arose on or about March 28, 2007.⁴ OWCP denied her claim because she failed to establish that her left lower extremity condition was employment related. The Board affirmed the denial of appellant's claim based on her failure to establish a causal relationship between her accepted employment exposure and her diagnosed left leg condition. The Board's January 25, 2010 decision is incorporated herein by reference.

On January 19, 2011 appellant's representative requested reconsideration before OWCP. The request was accompanied by a March 6, 2009 report from appellant's orthopedic surgeon, Dr. Robert A. Malinzak. OWCP had previously asked Dr. Malinzak to provide a comprehensive narrative report regarding the cause and extent of appellant's left lower extremity condition.

In his March 6, 2009 report, Dr. Malinzak indicated that appellant's deep vein thrombosis had since resolved without sequel; however, she continued to experience left knee pain, and various other symptoms of numbness and pain down the leg. He addressed the questions OWCP posed regarding the cause of appellant's condition. Dr. Malinzak prefaced his remarks with the caveat that "no one could say for sure" regarding causal relationship. He noted, among other things, that the employment activities appellant described could aggravate knee pain and discomfort. Dr. Malinzak further stated that proportional mechanics of the job "could certainly place increased pressure on the knee..." He also explained that appellant's cartilage injury "certainly can come from torsional factors that are greater than the strength of the tissues involved."

By decision dated April 5, 2011, OWCP denied appellant's request for reconsideration without reviewing the merits of the claim. In denying merit review, the claims examiner noted that Dr. Malinzak's opinion was "speculative in nature and of little substantial value..."⁵

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including

³ Docket No. 09-1428 (issued January 25, 2010).

⁴ At the time of her alleged injury, appellant worked as a modified sales service/distribution associate. This full-time, limited-duty assignment was a consequence of an employment-related bilateral upper extremity injury she sustained on or about April 21, 1998 (xx-xxxx418). Appellant attributed her latest left lower extremity injury to her prior duties as a rural carrier, as well as her duties as a modified sales service/distribution associate. On March 28, 2007 she underwent a left knee partial lateral meniscectomy, a medial femoral condyle chondroplasty and a patellar chondroplasty. Appellant was subsequently diagnosed with left leg deep venous thrombosis.

⁵ On reconsideration, a threshold question is whether appellant has presented "relevant and pertinent new evidence" not previously considered. 20 C.F.R. § 10.606(b)(2)(iii). Dr. Malinzak's March 6, 2009 report satisfied this particular requirement. However, the claims examiner denied merit review because in her opinion Dr. Malinzak's latest report was "speculative" and of little value. This goes to the weight of the evidence. *See Billy B. Scoles*, 57 ECAB 258, 259-60 (2005).

that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁶

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a 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 diagnosed condition is causally related to the identified employment factors.⁷

ANALYSIS

The Board finds that Dr. Malinzak's March 6, 2009 report is insufficient to establish that appellant's left knee condition is causally related to her accepted employment exposure. Dr. Malinzak began treating appellant in December 2006, and he performed the March 28, 2007 left knee arthroscopic procedure. He noted that she continued to experience left knee pain, and various other symptoms of numbness and pain down the leg. Dr. Malinzak also reported that appellant's deep venous thrombosis had resolved without sequela. OWCP posed a series of questions regarding the cause and extent of her left lower extremity condition. In responding to those specific questions, Dr. Malinzak prefaced his remarks with the caveat that "no one could say for sure" regarding causal relationship.

Appellant first worked as a rural carrier and then as a modified sales service/distribution associate. This latter position was a limited-duty assignment in response to employment-related injuries involving both upper extremities (xx-xxxx418), which she held since January 2006. Appellant advised Dr. Malinzak that her job involved "lifting, stairs, ladders, squatting, and standing on concrete for up to 8 to 10 hours a day." This may have been representative of her rural carrier duties, but not of her limited-duty assignment. In his March 6, 2009 report, Dr. Malinzak noted, among other things, that the employment activities appellant described could aggravate knee pain and discomfort. He further stated that proportional mechanics of the job "could certainly place increased pressure on the knee..." Dr. Malinzak also explained that appellant's cartilage injury "certainly can come from torsional factors that are greater than the strength of the tissues involved."

Appellant's limited-duty assignment as a modified sales service/distribution associate consisted of assisting with mail distribution and box mail, marking up mail, ordering office supplies, filing, verifying financial documentation, verifying customer addresses, performing

⁶ 20 C.F.R. § 10.115(e), (f) (2010); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

⁷ *Victor J. Woodhams*, *supra* note 6.

window clerk duties, answering the telephone and performing miscellaneous customer service support needs. The assignment was tailored to her then physical restrictions, which included intermittent lifting/carrying and pushing/pulling, a two-hour limitation on repetitive movements involving the wrists, elbows and shoulders, and a one-hour limitation on reaching, including above shoulder reaching. With the exception of her window clerk duties, most of appellant's other duties could be performed while seated at a case or a table.

The job description Dr. Malinzak obtained from appellant was inaccurate and incomplete. A physician's opinion on causal relationship must be based on a complete factual and medical background.⁸ Even with the limited employment information provided him, Dr. Malinzak did not definitively state that appellant's reported job duties caused her left knee condition. A physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.⁹ Dr. Malinzak's March 6, 2009 report was at best equivocal.

The Board finds that Dr. Malinzak's latest report does not constitute a rationalized medical opinion on causal relationship. Consequently, appellant failed to establish that her claimed left lower extremity condition is causally related to her federal employment.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP 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

Appellant failed to establish that her left knee condition is employment related.

⁸ *Id.*

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 5, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 2012
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