United States Department of Labor
Employees' Compensation Appeals Board

E.L., Appellant	)	
and	)	**Docket No. 12-303**
	)	**Issued: October 22, 2012**
FEDERAL JUDICIARY, U.S. BANKRUPTCY COURT, Cleveland, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 28, 2011 appellant, through her attorney, filed a timely appeal from the November 4, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 a right knee condition due to her 2004 employment-related fall.

FACTUAL HISTORY

On December 2, 2004 appellant, then an administrative technician, filed a traumatic injury claim alleging that on November 30, 2004 while exiting the copying room she tripped on a bundling strap and injured her left ankle, knee, low back and neck. She stopped work on November 30, 2004 and returned on December 20, 2004. OWCP accepted the claim for cervical

[1] 5 U.S.C. §§ 8101-8193.

sprain, aggravation of preexisting cervical disc disease, lumbar sprain, aggravation of preexisting lumbar disc disease, left medial collateral ligament sprain, aggravation of preexisting chondromalacia patella on the left, malalignment of the patella of the left knee and second to third degree tears of the lateral ligaments of the left ankle. It later expanded appellant's claim to include postlaminectomy syndrome and major depression, recurrent and moderate. OWCP authorized an L3-4 and L4-5 decompressive laminectomy and discectomy and an L3 to L5 laminectomy with bilateral foraminotomies on January 24, 2006.

After initial emergency room treatment on November 30, 2004 for a twisted left ankle, appellant was treated by Dr. Emile Sabbagh, a Board-certified physiatrist, from December 14, 2004 to January 19, 2005, for a left ankle and left knee injury sustained in the work-related fall. Dr. Sabbagh diagnosed low back strain/pain, left ankle and left knee sprain. Appellant was also treated by Dr. William Bohl, a Board-certified orthopedist, from April 28, 2005 to November 17, 2006, for lower back, neck, left knee and ankle injuries. Dr. Bohl noted that conservative therapy failed and on January 24, 2006 he performed an L3-4 and L4-5 decompressive laminectomy and discectomy and diagnosed spinal stenosis at L3-4 and L4-5 with protruded disc at both levels.

On February 7, 2007 appellant underwent an electromyogram which revealed chronic moderate bilateral C8 and T1, left C5-6 and C7 radiculopathy. She was treated by Dr. R. Douglas Orr, a Board-certified orthopedist, from April 5 to August 29, 2007, for increasing back pain and recurrent leg pain postdecompression surgery. On April 5, 2007 Dr. Orr performed L3, L4 and L5 laminectomies with bilateral foraminotomies, L3-S1 posterolateral fusion and L4-5 and L5-S1 transforaminal lumbar interbody fusions.

Appellant sought treatment from Dr. Daniel Zanotti, a Board-certified orthopedist, from April 26, 2010 to April 4, 2011, for right knee pain. She reported that she injured her right knee in 2004 when she was involved in an industrial accident. Appellant originally complained of back and left knee pain but later developed right knee pain. Dr. Zanotti noted tenderness over the medial joint with trace crepitus and no laxity. He noted that a sunrise view of the right knee revealed mild to moderate medial joint space narrowing. Dr. Zanotti diagnosed right knee sprain contusion with underlying degenerative joint disease. On August 2, 2010 he noted that a magnetic resonance imaging (MRI) scan revealed no evidence of internal derangement but moderate arthritic changes throughout the knee. Dr. Zanotti diagnosed right knee moderate arthritis, history of left knee degenerative joint disease and low back pain with previous surgery. On January 3, 2011 he treated appellant for bilateral knee pain, back and arm pain. Dr. Zanotti diagnosed bilateral knee pain/chondromalacia and history of multiple low back surgeries with chronic pain. A right knee MRI scan revealed no evidence of meniscal tear with myxoid degeneration, tricompartmental degenerative changes with patellofemoral predominance, heterogeneous signal which suggests old trauma and subchondral cyst formation.

On March 18, 2011 OWCP requested that Dr. Zanotti provide a report with a definitive diagnoses and address whether appellant's right knee condition was causally related to the November 30, 2004 work injury. In an April 4, 2011 report, Dr. Zanotti noted treating appellant's right knee since April 26, 2010 and that she reported experiencing pain in her right knee since a 2004 work injury. Appellant was diagnosed with mild to moderate knee arthritis. Dr. Zanotti noted that she had received a cortisone injection with improved function. He opined

that, with a high degree of medical certainty, appellant's work incident of 2004 caused an aggravation of her previously present right knee arthritis. Dr. Zanotti indicated that he did not have specific information on her work accident but noted that appellant likely had some underlying knee arthritis at the initial injury that was aggravated by the work injury.

On April 29, 2011 OWCP referred appellant to Dr. Manhal A. Ghanma, a Board-certified orthopedist, for a second opinion evaluation. In a May 16, 2011 report, Dr. Ghanma discussed appellant's work history. He noted findings on physical examination of no atrophy of the knees, no instability of the knees, no crepitus to range of motion of either knee, kneecaps were mobile with slow gait due to her back pain. Dr. Ghanma indicated that the MRI scan report of May 11, 2010 revealed degenerative changes in appellant's right knee, but appellant's right knee examination was normal indicating that the MRI scan study was not clinically significant. He opined there was insignificant objective evidence to support that the right knee condition was caused by the work injury. Dr. Ghanma reviewed Dr. Zanotti's April 4, 2010 report and disagreed with his findings that appellant's preexisting degenerative joint disease was aggravated by her work injury noting this opinion was speculative and there was no objective evidence to support that appellant had right knee arthritis at the time of her work incident or that it was aggravated by any injury. He opined that there was no evidence of direct causation, aggravation, acceleration or precipitation of any right knee condition by appellant's work injury of November 30, 2004. Dr. Ghanma further noted there was no indication that appellant had a right knee injury as a result of the operative procedure performed on her spine.

In a decision dated May 19, 2011, OWCP denied appellant's claim for a right knee condition on the grounds that the evidence did not demonstrate that the claimed medical condition was related to the established work-related events.

On June 1, 2011 appellant requested a telephonic hearing that was held on September 19, 2011. She submitted reports from Dr. Murray A. Greenwood, a Board-certified physiatrist, from June 13 to October 18, 2011, who treated her for failed back surgical syndrome, status post lumbar fusion, arachnoiditis and major depression. Appellant was treated by Dr. Mosunmola Babade, a Board-certified internist, on September 29, 2011. Dr. Babade diagnosed lumbosacral spondylosis, cervical spondylosis, postlaminectomy syndrome of the lumbar spine, cervical disc displacement and thoracic spondylosis. Reports from Dr. Amit Tandon, a Board-certified internist, dated September 19, 2011, noted appellant's treatment for back pain and diagnosed lumbar sprain. An MRI scan of the lumbar spine dated October 1, 2011 revealed no significant changes from the prior August 2010 report with stable L3-S1 fusion and degenerative changes at L2-3. A May 27, 2011 EMG revealed no abnormalities.

In a decision dated November 4, 2011, OWCP's hearing representative affirmed the decision dated May 19, 2011.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[2]

Causal relationship is a medical issue that must be established by rationalized medical opinion evidence.[3] 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 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.[4] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[5]

ANALYSIS

Appellant alleges that she developed a right knee condition as a result of the accepted work incident of November 30, 2004. OWCP accepted the claim, as noted, for several conditions but did not accept a right knee condition.

The Board finds that the medical evidence is insufficient to establish that appellant developed a right knee condition causally related to this work injury. The medical records submitted most contemporaneously with the date of injury, specifically initial emergency room notes from November 30, 2004 noted treatment for a twisted left ankle. Other reports from Dr. Sabbagh diagnosed low back strain/pain, left ankle and left knee sprain sustained after a work-related fall. Similarly, reports from Dr. Bohl from April 28, 2005 to November 17, 2006 noted treatment for lower back, neck, left knee and ankle injuries. The physicians did not diagnose a right knee condition. The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence.[6] These reports do not support that the November 30, 2004 injury caused or aggravated any additional right knee conditions.

In reports dated April 26, 2010 to April 4, 2011, Dr. Zanotti noted treating appellant for right knee pain. Appellant reported that she injured her right knee in 2004 when she was involved in an industrial accident. She originally complained of back and left knee pain but

[2] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[3] *Elizabeth H. Kramm* (*Leonard O. Kramm*), 57 ECAB 117 (2005).

[4] *Leslie C. Moore*, 52 ECAB 132 (2000).

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

[6] *See Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).

developed right knee pain. Dr. Zanotti diagnosed right knee sprain contusion with underlying degenerative joint disease and arthritis. On January 3, 2011 he treated appellant for bilateral knee pain, back and arm pain and diagnosed bilateral knee pain/chondromalacia and history of multiple low back surgeries with chronic pain. However, Dr. Zanotti appears merely to be repeating the history of injury as reported by appellant without providing his own opinion regarding whether her condition was work related. To the extent that he is providing his own opinion, he failed to provide a rationalized opinion regarding the causal relationship between appellant's right knee condition and the accepted injury. Therefore, this report is insufficient to meet appellant's burden of proof. Also, on March 18, 2011 OWCP requested that Dr. Zanotti provide a rationalized opinion addressing how the diagnosed right knee condition was related to the November 30, 2004 work injury. In an April 4, 2011 report, Dr. Zanotti noted treating appellant's right knee since April 26, 2010 when she reported having right knee pain since the 2004 work injury. He opined that, with a high degree of medical certainty, her work incident of 2004 caused an aggravation of her previously present right knee arthritis. Dr. Zanotti indicated that he did not have "specifics of her work accident" but noted that appellant "likely" had some underlying knee arthritis at the initial injury that was aggravated by the work injury. The Board notes that Dr. Zanotti's report provides some support for causal relationship but is insufficient to establish the claimed right knee condition was causally related to her accepted work injury. In that report, Dr. Zanotti opined that he did not have "specifics of her work accident" but noted that appellant "likely" had some underlying knee arthritis at the initial injury that was aggravated by the work injury. This report provides only speculative support for causal relationship. Medical opinions that are speculative or equivocal in character are of diminished probative value.[7] Dr. Zanotti provided no medical reasoning to support his opinion on causal relationship. Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant submitted reports from June 13 to October 18, 2011 from Dr. Greenwood, who treated her for failed back surgical syndrome, status post lumbar fusion, arachnoiditis and major depression. Similarly, a September 29, 2011 report from Dr. Babade diagnosed lumbosacral spondylosis, cervical spondylosis, postlaminectomy syndrome of the lumbar spine, cervical disc displacement and thoracic spondylosis. Likewise, Dr. Tandon, on September 19, 2011, noted appellant's treatment for back pain and diagnosed lumbar sprain. However, Drs. Greenwood, Babade and Tandon did not specifically address how any right knee condition was due to the accepted work injury of November 30, 2004.[8]

To further develop the claim, OWCP referred appellant to Dr. Ghanma for a second opinion as to whether appellant's right knee condition was causally related to her accepted work injury. In his May 16, 2011 report, Dr. Ghanma indicated that the May 11, 2010 MRI scan report revealed degenerative changes in appellant's right knee. However, the right knee examination was normal, indicating the MRI scan study was not clinically significant. Dr. Ghanma opined that there was insignificant objective evidence to support that the right knee condition was caused by the work injury. While he reviewed Dr. Zanotti's April 4, 2010 report, he explained that he found no objective evidence to support that appellant had right knee arthritis

[7] *D.D.*, 57 ECAB 734 (2006).

[8] *See A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

at the time of her work incident or that it was aggravated by any injury. Dr. Ghanma found no basis to attribute, by cause or aggravation, any right knee condition by appellant's work injury of November 30, 2004. He further noted there was no indication that appellant had a right knee injury as a result of the operative procedure performed on her spine.

The Board finds that the opinion of Dr. Ghanma represents the weight of the evidence and establishes that appellant's right knee condition was not causally related to her accepted work injury. Neither the fact that a claimant's condition became apparent during a period of employment, nor the belief that the condition was caused, precipitated or aggravated by the employment is sufficient to establish causal relationship.[9] Thus, appellant did not meet her burden of proof to establish that the right knee condition is causally related to employment factors.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a right knee condition causally related to her November 30, 2004 work injury.

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 22, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

[9] *D.I.*, 59 ECAB 158 (2007).