

of duty. OWCP accepted appellant's claim for right knee contusion. Appellant did not stop work. She immediately returned to light duty and then returned to regular duty on January 17, 2012. Appellant received compensation benefits.

In a March 27, 2012 report, Dr. Bin Yang, a Board-certified pathologist, noted that appellant sustained an injury to her right knee after she struck her right knee against a table with a flap on January 13, 2012 while on duty. He advised that appellant's right knee x-ray revealed no evidence of fracture, questionable small effusion, and relatively mild degenerative changes most severe in the medial compartment. The physician diagnosed contusion of right knee with chondromalacia and effusion secondary to trauma, and osteoarthritis of the right knee. Dr. Yang placed appellant on modified work from January 13 to 16, 2012 and indicated that she could return to regular duty on January 17, 2012.

In a January 4, 2013 report, Dr. Richard Boiardo a Board-certified orthopedic surgeon, noted that appellant presented with persistent and now severe pain in the medial aspect of the knee. He examined appellant and noted that the computerized tomography (CT) scan revealed evidence of moderate-to-severe osteoarthritis of the medial aspect of the knee.² The physician recommended unicompartmental arthroplasty.

On September 5, 2013 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that she sustained a recurrence of her January 13, 2012 injury on June 3, 2013. She explained that she stopped work on June 9, 2013 to have knee surgery.³

By letter dated October 8, 2013, OWCP informed appellant of the type of evidence needed to support her claim for a recurrence of disability and requested that she submit such evidence within 30 days.

On September 5, 2013 OWCP received a statement from appellant. Appellant noted that the original injury occurred because she hit her knee on a table in the kitchen. She explained that her knee swelled and she had continuous pain since the incident. Appellant noted that when standing for extended periods of time the swelling increased. She advised that when she returned to work, she was given a prescription for Percocet and monthly cortisone injections. Appellant indicated that she was supposed to take Percocet twice a day, but she did not take it until she completed her shift and returned home because it made her drowsy and impaired her productivity. She explained that as a result, she was in constant pain and limping while working.

In an August 23, 2013 attending physician's report, Dr. Boiardo advised that on March 2, 2012 appellant had an injury at work. He advised that appellant was scheduled for surgery on June 3, 2013.

² An October 24, 2012 CT scan of the right knee without contrast, read by Dr. Christian Annese, a Board-certified diagnostic radiologist, revealed: no meniscal or ligament tear; full thickness cartilage loss medial compartment with a more focal one centimeter region of osteochondral injury; small-to-moderate joint effusion; three centimeter partially ruptured medial popliteal cyst; focal six millimeter cartilage defect in the lateral femoral condyle and a partial thickness cartilage loss in the medial patellar facet.

³ On April 10, 2013 appellant claimed a recurrence for medical treatment that began on March 29, 2013. In a July 15, 2013 decision, OWCP denied appellant's claim for a recurrence for additional medical care.

By decision dated November 26, 2013, OWCP denied appellant's claim for a recurrence of disability. It found that the evidence failed to establish that appellant was disabled, or further disabled, due to a material change of the accepted conditions.

On November 27, 2013 OWCP received an October 30, 2013 report from Dr. Boiardo, who advised that appellant was evaluated in his office in January 2012. Dr. Boiardo indicated that she had a "preexisting history of bilateral knee osteoarthritis" and "sustained a history of a fall, two incidents at work, in November 2011 and January 13, 2012."⁴ Appellant related that she had a severe increase of pain in the right knee. He noted that his examination revealed objective findings to include evidence of moderate to severe osteoarthritis to the medial aspect of the knee. Surgery was recommended and appellant underwent right unicompartmental knee replacement with partial medial meniscectomy and partial synovectomy on June 3, 2013. Dr. Boiardo explained that appellant was also seen on October 29, 2013, when her physical examination revealed that her gait and range of motion of the knee were improved. He found that she still exhibited marked and persistent quadriceps weakness and when she was on her feet for a prolonged period of time, she continued to have severe pain. Dr. Boiardo also noted that appellant was complaining of pain and restricted motion in the left knee as well. He advised that as a direct cause and result of the injuries at work, most recently the January 2012 incident, appellant, who had functioned with preexisting osteoarthritis in both knees, especially the right knee, could no longer stand the discomfort after the November 2011 and January 2012 work injuries. Dr. Boiardo explained that the knee arthritis decompensated, necessitating unicompartmental replacement of the right knee. He explained that the repeated trauma to the right knee and decompensation of the muscle groups around the knee were secondary to the trauma. The physician explained that the "need to see ... more mechanical load" was a direct result of the decompensation. He further noted that appellant would require a contralateral left knee replacement arthroplasty, either unicompartmental or total. Dr. Boiardo opined that, as a result to the injury, appellant had permanent disability and could not perform her job.

On December 11, 2013 counsel requested a telephonic hearing, which was held before an OWCP hearing representative on July 2, 2015. During the hearing appellant noted that she fell at work in November 2011 but did not file a claim as it appeared to be minor. She explained that she fell on both knees and required a few visits with her physician. She denied having any prior knee issues. Appellant argued that the original fall did not cause her knee problem because she recovered from the fall. She described her work duties, which included pushing trucks and serving trays on the line and standing for four and a half hours. She indicated that she had right knee surgery and was off work for approximately four months.

In a January 20, 2014 letter, counsel provided OWCP with a copy of Dr. Boiardo's October 30, 2013 report.

By decision dated September 2, 2015, OWCP's hearing representative affirmed the November 26, 2013 decision.

⁴ The present claim before the Board pertains only to the January 13, 2012 injury.

LEGAL PRECEDENT

Section 10.5(x) of OWCP's regulations provide that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁵

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.⁶

Appellant has the burden of establishing that she sustained a recurrence of a medical condition⁷ that is causally related to her accepted employment injury. To meet her burden, appellant must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.⁸ Where no such rationale is present, the medical evidence is of diminished probative value.⁹

An award of compensation may not be based on surmise, conjecture or speculation. 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.¹⁰

ANALYSIS

OWCP accepted appellant's traumatic injury claim for right knee contusion. Appellant returned to regular duty on January 17, 2012. Appellant subsequently claimed a recurrence of total disability beginning June 3, 2013.

However, there is no rationalized medical opinion which sufficiently explains why appellant had a recurrence of disability caused by a spontaneous change in a medical condition on June 3, 2013 causally related to her January 13, 2012 work injury, without an intervening injury or new exposure to the work environment that caused the illness.¹¹ This is especially

⁵ 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

⁶ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104.

⁷ 20 C.F.R. § 10.5(y) (2002).

⁸ *Ronald A. Eldridge*, 53 ECAB 218 (2001).

⁹ *Mary A. Ceglia*, 55 ECAB 626 (2004); *Albert C. Brown*, 52 ECAB 152 (2000).

¹⁰ *Walter D. Morehead*, 31 ECAB 188 (1986).

¹¹ See *supra* note 4.

important as appellant claims a new exposure of prolonged standing after her return to work, which further contributed to her condition.

The Board notes that initial medical reports submitted by Dr. Yang, reveal that there was no evidence of fracture and he released her to regular duty four days after the event on January 17, 2012. Furthermore, he explained that x-rays revealed osteoarthritis and mild degenerative changes.

In support of her recurrence claim, appellant submitted several reports from Dr. Boiardo. In his October 30, 2013, report, Dr. Boiardo noted that appellant had a “preexisting history of bilateral knee osteoarthritis” and referenced a history of falls which included “two incidents at work, in November 2011 and January 13, 2012.” Appellant reported that she had a severe increase in right knee pain and noted finding evidence of moderate to severe osteoarthritis to the medial aspect of the knee. He noted her right knee replacement with partial medial meniscectomy and partial synovectomy on June 3, 2013. On October 29, 2013 appellant had marked and persistent quadriceps weakness and severe pain when she was on her feet for a prolonged period. She also reported left knee pain and restricted motion. Dr. Boiardo advised that as a direct cause and result of work injuries, most recently the January 2012 injury, appellant, who had functioned with preexisting osteoarthritis in both knees, could no longer stand the discomfort. Dr. Boiardo found that the knee arthritis decompensated, necessitating unicompartmental replacement of the right knee. He stated that the repeated trauma to the right knee and decompensation of the muscle groups around the knee were secondary to the trauma. Dr. Boiardo opined that as a result of the injury, appellant had permanent disability and could not perform her job. As noted, OWCP only accepted a traumatic right knee contusion. It has not accepted any arthritic conditions.¹² Dr. Boiardo’s opinion supports that appellant sustained a new occupational disease or injury, an aggravation of preexisting bilateral osteoarthrosis, instead of a spontaneous change in the January 13, 2012 right knee contusion. He did not offer a rationalized medical opinion explaining how the accepted right knee contusion led to appellant’s current condition or the claimed recurrence of disability beginning June 3, 2013.¹³

Other reports from Dr. Boiardo include a January 4, 2013 report which predates the alleged recurrence of disability. The August 23, 2013 attending physician’s report from Dr. Boiardo contains an inaccurate date of injury as he referred to March 2, 2012 as the date of appellant’s work injury.¹⁴ This report also does not explain how the accepted right knee contusion caused appellant’s claimed recurrent disability beginning June 3, 2013. These reports are insufficient to establish the claimed recurrence of disability.

Accordingly, the Board finds that appellant has not met her burden of proof in this case as she has not submitted sufficiently reasoned medical opinion explaining why her recurrence of

¹² See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury).

¹³ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not supported by medical rationale is of little probative value).

¹⁴ See *Leonard J. O’Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

disability beginning June 3, 2013 was caused or aggravated by the January 13, 2012 employment injury.

On appeal counsel argues that Dr. Boiardo's opinion was sufficiently rationalized to support her claim. However, as noted above, Dr. Boiardo provided insufficient medical reasoning to explain how a right knee contusion caused appellant's diagnosed conditions and disability beginning June 3, 2013, as opposed to a new occupational disease or injury.

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

The Board finds that appellant has not established a recurrence of disability on June 3, 2013 causally related to her January 13, 2012 injury.

ORDER

IT IS HEREBY ORDERED THAT the September 2, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board