

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of GAIL E. SALTONSTALL and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICES, Seattle, WA

*Docket No. 98-1452; Submitted on the Record;  
Issued February 16, 2000*

---

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on August 5, 1997.

On September 11, 1997 appellant, then a 44-year-old tax examiner, filed a notice of traumatic injury (Form CA-1) alleging that she bent down to pick up papers which had fallen from the top of a copier and sustained "torn ligaments right knee." Appellant indicated that she stopped work at 8:00 a.m. on August 20, 1997 and returned the following day. She stated that she first received medical care on August 25, 1997 from Dr. Jakawitch at Group Health/ARNP in Port Orchard, Washington. She notified her supervisor of the injury on September 11, 1997.

By letter dated October 29, 1997, the Office of Workers' Compensation Programs advised appellant and the employing establishment that the information submitted was not sufficient to establish that she sustained an injury as alleged. Appellant was advised to submit medical evidence in support of her alleged injury. The Office provided a detailed list of evidence needed and questions to be followed. Appellant was allotted 30 days in which to submit the requested evidence.

In a November 8, 1997 letter, received by the Office on November 13, 1997, appellant gave detailed answers to the Office's factual evidence requests concerning her claim and stated that she had submitted a copy of the Office's letter to Group Health Cooperative of Washington to respond to the medical portion of the Office's inquiries.

In a physicians' initial report dated October 15, 1997, Dr. A. Jeffrey Bialer gave a diagnosis of "joint pain -- left leg" and indicated by check mark that appellant could not return to regular work. Dr. Bailer prescribed a pain reliever and referred appellant to Dr. Daniel Fife, an orthopedic surgeon at Tacoma Specialty Center for x-rays.

By report dated October 17, 1997, Dr. Fife revealed that appellant complained of right knee instability or insecurity. He noted “some swelling may be in the calf of her leg.” Dr. Fife also noted no history of joint problems and assessed:

“I suspect she has some internal derangement of the knee and I have asked her to go ahead and get an MRI [magnetic resonance imaging] scan. Plain films have been reviewed and do not show any abnormalities. I am not suspecting a loose body or some form of synovitis.”

\* \* \*

“One thing further is that I cannot rule out completely that she might have a Baker’s cyst ... that needs to be considered.”

In a November 4, 1997 report, Dr. Fife requested that appellant have an ultrasound of the popliteal area of her right knee. He gave his impression due to tenderness as “appellant has medial meniscal tear being the most likely diagnosis.” Dr. Fife also stated “[s]he has also probably had some preexisting mild degenerative joint disease as well.”

In another follow-up report from Dr. Fife dated November 12, 1997, he indicated that appellant “may have an intra articular pathology ... related to her on-the-job injury” but that a recent ultrasound revealed that appellant has a large Baker’s cyst behind her knee that is not directly related to her on-the-job injury.

By letter dated December 9, 1997, the Office advised Dr. Fife to clarify his diagnosis of appellant’s condition providing medical discussion and rationale of appellant’s condition.

In a December 15, 1997 letter, Dr. Fife noted that appellant had no previous difficulty with her right knee but was overweight and known to smoke and have some hypertension and thyroid disease. An ultrasound noted that appellant had Baker’s cyst in the right popliteal fossa but Dr. Fife stated that he did not believe it was a result of the bending incident although “she may have had an injury to her knee superimposed upon preexisting conditions ... such as degenerative changes in the meniscus or in the surface of the knee.” Dr. Fife stated:

“However, my most likely diagnosis is that she had a medial meniscal tear with some preexisting degenerative changes in the meniscus. Based on my experience, it seems more likely than not that her symptoms were related to, at least in part, to her claimed onset of pain, although specifically no injury occurred. This is the reason it leads me to believe that she probably had early degenerative changes in her knee.”

By decision dated January 8, 1998, the Office denied appellant’s claim for an injury on August 5, 1997 on the grounds that the evidence of record failed to establish that she sustained an injury on that date causally related to factors of her employment.

The Board finds that appellant did not meet her burden of proof in establishing that she sustained an injury to her right knee in the performance of duty on August 5, 1997, as alleged.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.<sup>1</sup> The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>2</sup> Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.<sup>3</sup> While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,<sup>4</sup> neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>5</sup>

In the instant case, appellant has attributed a knee injury to the bending incident which occurred in the course of her federal employment. As noted above, the medical evidence must be based on a complete background and must contain an opinion with supporting rationale. Appellant provided multiple medical reports in support of her claim from Drs. Bialer and Fife.

In the October 15, 1997 letter from Dr. Bialer, he initially reported that "[x]-rays of [appellant's] right knee shows minimal degenerative changes with what appears to be slight joint space narrowing laterally" and subsequently pointed out that "[appellant] states that her knee tends to give out. It does not lock" and that "Ibuprofen did not help." He speculated "possible meniscal injury." Dr. Bialer did not provide an opinion as to the cause of appellant's right knee symptoms.

In a reports dated October 17, November 4 and 12 and December 15, 1997, Dr. Fife assessed that he suspected that appellant had some internal derangement of the right knee and could also not rule out completely that she might have a Bakers' cyst and that this all needed to be further evaluated through an MRI scan. He noted in his November 4, 1997 report that appellant could not have an MRI scan and recommended that she have an ultrasound, however, his impression due to the medial joint line tenderness of appellant's right knee "is that she has medial meniscal tear being the most likely diagnosis. She has also probably had some preexisting mild degenerative joint disease as well." An ultrasound revealed that appellant had a Bakers' cyst on her right knee. Dr. Fife recommended that "she may have an intra articular pathology from her on-the-job injury, that her Bakers' cyst is not directly related to the on-the-job injury in August [1997]" and in his December 15, 1997 report, Dr. Fife pointed out that based on his experience it seemed more likely that appellant's symptoms were, in part, related to her claimed onset of pain but "specifically no injury occurred and that he believed "she probably

---

<sup>1</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>2</sup> *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

<sup>3</sup> *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

<sup>4</sup> *See Kenneth J. Deerman*, 34 ECAB 641, 645 (1983).

<sup>5</sup> *See Morris Scanlon*, 11 ECAB 384-85 (1960).

had early degenerative changes in her knee.” However, his opinion that appellant’s right knee injury was employment related was speculative as he stated that it “seemed” more likely that her symptoms were related to her on-the-job injury. Furthermore, Dr. Fife provided insufficient medical rationale explaining how the August 5, 1997 incident caused the right knee condition. Due to these deficiencies, these reports are not sufficient to establish that appellant sustained a right knee injury causally related to factors of her employment.

Moreover, section 8118(a) of the Federal Employees’ Compensation Act provides for payment of continuation of pay, not to exceed 45 days, to an employee “who has filed a claim for a period of wage loss due to a traumatic injury with her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.”<sup>6</sup> Section 8122(a)(2) provides that written notice of the injury shall be given “within 30 days.”<sup>7</sup> The context of section 8122 makes clear that this means within 30 days of the date of the injury.<sup>8</sup>

The document in the case record that serves as a claim for continuation of pay is the CA-1 form filed by appellant on September 11, 1997 and received by an employing establishment manager on October 11, 1997. As this claim was filed more than 30 days after appellant’s alleged August 5, 1997 injury, her claim for continuation of pay is barred by statute.

The January 8, 1998 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, D.C.  
February 16, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

---

<sup>6</sup> 5 U.S.C. § 8118(a).

<sup>7</sup> 5 U.S.C. § 8122(a)(2).

<sup>8</sup> *Robert E. Kimzey*, 40 ECAB 762, 763-64 (1989).