

hole in the floor to temporarily repair it. Supervisor Kenneth Tyndal stated that temporary measures to repair damage to the office floor had created a dangerous obstacle in the hallway over which appellant tripped while coming to work in darkened conditions. He reported that appellant received medical treatment from Dr. Edward Reed, a Board-certified family practitioner, the day of the accident but that the medical reports did not indicate that she was disabled for work.

On February 18, 2005 Dr. David Fox, a Board-certified orthopedic surgeon, noted that, since falling onto both knees on January 11, 2005, appellant had “incredible pain” in her left knee. Appellant was treated with anti-inflammatory medication without success. Dr. Fox stated that she experienced swelling, locking and catching in the left knee, pain over the medial area and the feeling that the plate was going to come out of the skin laterally. He stated that appellant continued to work and did not use a cane. On examination, Dr. Fox found that her left knee was stable, but noted tenderness over the medial line, mild tenderness over the plate and a range of motion from 0 to 120 degrees. On review of x-rays, he found that appellant’s plate was in excellent alignment, an osteotomy he had performed in 2001 was well healed and the degenerative changes in the medial compartment were getting worse. Dr. Fox stated that she may have to undergo a total knee arthroplasty.

On February 28, 2005 Dr. Robert Pinter, a Board-certified occupational medicine practitioner, prepared a duty status report. He prohibited appellant from climbing, kneeling and bending or stooping and limited her to two hours of walking and three hours of standing per day.

On March 17, 2005 the Office authorized Dr. Fox to provide appellant with the requested left knee injections. Physician’s assistant Tamara Toombs performed these injections from March 25 to May 4, 2005. On May 4, 2005 Ms. Toombs indicated that appellant could work eight hours a day, including one hour of walking and seven hours of sitting. This recommendation was based on a work capacity evaluation prepared by Dr. Fox limiting appellant to one hour of sitting and one hour of standing in an eight-hour day and prohibiting bending or stooping, squatting, kneeling or climbing.¹

On May 26, 2005 the Office requested that appellant submit medical evidence establishing that she sustained an injury related to her fall on January 11, 2005. It stated that the records currently in her file did not contain a clear diagnosis related to her fall or an explanation of how the employment incident caused or aggravated appellant’s left knee condition.

In a report dated June 15, 2005, Dr. Fox reported that appellant continued to have pain in her left knee. He stated that x-rays showed bone on bone degenerative disease, but that he did not believe appellant’s knee was the primary source of her pain. Dr. Fox noted that appellant also hurt her back when she fell. He recommended that she receive a magnetic resonance image (MRI) scan and x-rays of her lumbar spine and be referred to a specialist for pain management.

¹ The evaluation, which was filled in by hand, contains the preprinted date of October 10, 2003. The evaluation was received by the Office on May 16, 2005 and contains appellant’s current claim number. For these reasons, the Board notes that the date on the evaluation is likely a typographical error.

On June 22, 2005 appellant notified the Office that she had requested the required medical information from her primary care physician, Dr. Reed. She stated that she was experiencing increased back and sciatic pain due to her fall. Appellant provided medical evidence related to two previous left knee surgeries: a partial mediolateral meniscectomy/arthroscopy performed in 1996 and an osteotomy performed in 2001.

On June 29, 2005 Dr. Reed provided records of appellant's treatment from April to September 2004. In progress notes dated April 21, 2004, a physician's assistant Hugh Lothery reported that appellant was experiencing pain radiating down her left leg. He noted that she had a history of degenerative disc disease, had been treated with a laminectomy and periodically experienced radiating pain. Mr. Lothery stated that appellant did not report a specific injury, but that she had gained weight and was not exercising because of a prior knee surgery. On August 9, 2004 Dr. Reed noted that appellant had experienced pain and numbness in her lower left leg for approximately six weeks. He diagnosed back pain/lumbago with symptoms of lumbar radiculopathy and prescribed physical therapy. On September 9, 2004 Dr. Reed stated that appellant's lumbar radiculopathy was improving with physical therapy and that appellant was losing weight.

On June 24, 2005 Dr. Gregory Goodwin reported that an MRI scan of appellant's lumbar spine revealed multilevel degenerative disc disease, degenerative facet disease and spondylosis. He noted a fairly severe central spinal canal stenosis at L4-5 and a Grade 1 spondylolisthesis of L4 on L5. Dr. Goodwin found a mild symmetrical protrusion of the L2-3 disc along its right posterolateral margin that narrowed the inferior aspect of the right neural foramen. On an x-ray he found degenerative disc disease at L2-3 and L3-4 and mild degenerative disc disease at L4-5. Dr. Goodwin saw no acute fracture or bone destruction.

By decision dated August 9, 2005, the Office denied appellant's claim on the grounds that the medical evidence did not establish that her claimed medical conditions were related to the accepted employment incident. On September 9, 2005 Dr. Fred L. Perez, Jr.,² provided appellant with work restrictions on posture and motion related to her back condition.

On August 9, 2006 appellant requested reconsideration. She argued that her fall was compensable because it occurred on the employing establishment premises while she was headed to her office. Appellant stated that the record was clear that she hurt her knees when she fell and that her treating physicians could "not rule out that [she] sustained an [on-the-job injury] to her spinal column."

In a November 28, 2005 report, Dr. Perez reviewed appellant's history and conducted a physical examination on August 31, 2005. He stated that her January 2005 fall could have caused her back pain, especially given appellant's previous laminectomy. Dr. Perez found that her lumbosacral spine was tender to palpitation over the lower four vertebrae that flexion and extension on both the left and right sides were 30 to 40 percent of normal range of motion. Dr. Perez could not conduct a straight leg raise test due to appellant's pain and that her pain was so severe that she had difficulty with personal hygiene. He found that appellant had some paresthesias and numbness on the lateral aspect L4-5 dermatome level of her left leg. Dr. Perez

²Dr. Perez's Board-certification status could not be determined.

stated that it was significant that an x-ray of appellant's lumbar spine conducted on August 9, 2004 contained no evidence of the spondylolisthesis seen in her June 24, 2005 x-rays. He did not rule out that the spondylolisthesis could have been present before the accident or that it occurred after it, but noted that appellant's pain became constant only after the accident. In a work status report completed August 31, 2005, Dr. Perez diagnosed internal derangement of left knee and acute exacerbation of back pain from the January 11, 2005 fall. Appellant also attached progress reports dated December 8, 2005 to July 26, 2006 from Dr. Fernando T. Avila, chronicling her knee and back pain. Dr. Avila also submitted a return to work certificate dated July 31, 2006 indicating that appellant returned to work on July 31, 2006 following her absence from July 26 through 30, 2006.

By decision dated August 30, 2006, the Office denied modification of its August 9, 2005 decision. It found that appellant had failed to provide sufficient medical evidence to establish a causal relationship between the January 11, 2005 employment incident and her claimed left knee and back conditions.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ 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; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office must first determine whether "fact of injury" has been established. "Fact of injury" consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the incident caused a personal injury, and, generally, this can be established only by medical evidence.⁵

When determining whether the implicated employment factors caused the claimant's diagnosed condition, the Office generally relies on the rationalized medical opinion of a physician.⁶ To be rationalized, the opinion must be based on a complete factual and medical background of the claimant⁷ and must be one of reasonable medical certainty,⁸ explaining the

³ 5 U.S.C. §§ 8101-8193.

⁴ *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ *John W. Montoya*, 54 ECAB 306 (2003).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

ANALYSIS

The Office accepted that appellant fell on January 11, 2005 after tripping over a piece of wood covering a hole in the floor. The issue to be determined is whether appellant has established that she sustained injuries to her left knee or lumbar spine as a result of the accepted employment incident. The Board finds that appellant has not submitted sufficient evidence to meet this burden of proof.

The Board notes that, when appellant filed her claim on January 14, 2005 she claimed an injury only to her left knee. Appellant did not allege an injury to her lumbar spine until June 22 2005, despite the fact that Dr. Perez stated in his November 28, 2005 report that appellant's spine had constant pain following her fall. Dr. Fox, a Board-certified orthopedic surgeon, did not discuss the back condition until June 15, 2005, four months after the accepted employment incident. The Board finds that appellant has not submitted sufficient medical evidence to establish that she sustained an injury while in the performance of duty.

Appellant submitted several medical reports and progress notes in support of her alleged knee and spinal injuries. Her Supervisor, Mr. Tyndal, stated that appellant was seen by Dr. Reed, a Board-certified family practitioner, on the day of the employment incident and was determined not to be disabled from work. However, the record does not contain any evidence of her examination or treatment by Dr. Reed on that day. The only evidence of Dr. Reed's treatment of appellant predates her accepted employment incident. In reports dated April to September 2004, he noted a history of degenerative disc disease and diagnosed back pain and lumbar radiculopathy. Dr. Reed prescribed weight loss and physical therapy, which appeared to relieve the pain. These reports do not establish that appellant's knee or back conditions were caused by the accepted employment injury of January 11, 2005.

The first medical report in the record that discussed appellant's employment incident was dated February 18, 2005, nearly a month following her fall. On that day Dr. Fox reported that, since falling onto both knees on January 11, 2005, appellant experienced pain, swelling, locking, catching and the feeling that the plate was going to come out of the skin laterally. On examination, he found tenderness over the medial line and plate and a reduced range of motion. Dr. Fox' review of the left knee x-rays revealed excellent alignment, a well-healed osteotomy and worsening degenerative changes in the medial compartment. He noted that the anti-inflammatory drugs with which she had been treated up to that point had not been successful and recommended injections to diminish her pain and delay the need for a total knee arthroplasty. However, he did not discuss what effect, if any, the January 11, 2005 employment incident had on the condition of her left knee. For this reason, the Board finds that Dr. Fox's February 18, 2005 report is insufficient to establish a causal relationship between appellant's knee condition and her accepted fall.

⁹ *Judy C. Rogers*, 54 ECAB 693 (2003).

On June 15, 2005 Dr. Fox noted that appellant's knee continued to cause her pain, but that her back was now the primary source of pain. He stated that she injured her back when she fell, but did not explain why the back condition had not been previously reported or how he determined that the back pain was caused by the fall. Because Dr. Fox did not explain how the January 11, 2005 employment incident caused or aggravated the condition of appellant's lumbar spine, the Board finds that this report is insufficient to establish a causal relationship.

On June 24, 2005 appellant underwent an MRI scan and an x-ray of her lumbar spine. Dr. Goodwin noted multilevel degenerative disc disease, degenerative facet disease and spondylosis. He found a severe central spinal canal stenosis at L4-5, a Grade 1 spondylolisthesis of L4 on L5 and a mild symmetrical protrusion of the L2-3 disc along its right posterolateral margin that narrowed the inferior aspect of the right neural foramen. Dr. Goodwin's reports contained no opinion as to the cause of appellant's condition. Without an opinion on causal relation, the reports of Dr. Goodwin are insufficient to establish appellant's claim of spinal injury.

On November 28, 2005 Dr. Perez prepared a report based on his August 31, 2005 examination of appellant and a review of her medical history. He opined that the accepted employment incident could have caused appellant's back condition, especially given her previous spinal laminectomy. Dr. Perez noted that appellant had tenderness and limited range of motion on her lumbar spine. He emphasized that x-rays of appellant's spine made in August 2004 gave no evidence of spondylolisthesis, but that those made in June 2005, after the employment incident, showed this condition. Dr. Perez stated that this was not certain evidence that the condition was caused by fall, but indicated that it was a strong possibility, since she had experienced constant pain only after the accident. He did not provide an explanation of how the accepted employment condition could have caused the diagnosed spinal condition. The Board finds that this report is not sufficient to establish appellant's claim because it does not contain an opinion of reasonable medical certainty and is not supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

The record contains work restriction forms from Drs. Pinter, Fox and Perez. These documents do not contain any rationalized medical opinion on the issue of causal relationship. The record also contains an unsigned report and progress notes purportedly from Dr. Avila. These reports do not address the issue of whether appellant sustained an injury in the performance of duty. As such, they are insufficient to establish appellant's claim.

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury as a result of the accepted January 11, 2005 employment incident.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty on January 11, 2005.

¹⁰ See *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 30, 2006 is affirmed.

Issued: May 17, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board