United States Department of Labor
Employees' Compensation Appeals Board

A.F., Appellant	)	
and	)	**Docket No. 10-1497**
	)	**Issued: March 22, 2011**
DEPARTMENT OF VETERANS AFFAIRS, RECORDS MANAGEMENT CENTER, St. Louis, MO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 11, 2010 appellant filed a timely appeal from a February 22, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to 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 met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on June 23, 2009.

FACTUAL HISTORY

On July 20, 2009 appellant, then a 48-year-old file clerk, filed a traumatic injury claim alleging that she sustained right knee pain and swelling on June 23, 2009 as a result of repeated

contact between her right knee and the first two steps of a ladder that she climbed at work.[1] She stopped work on August 10, 2009.

Return-to-work forms for the period July 13 to 31, 2009 signed by Drs. Rekha Devkota and Gail L. Birkenmeier, a Board-certified family practitioner and internist, respectively, advised that appellant be placed on limited duty due to right knee pain. A July 28, 2009 note from Dr. Birkenmeier specified that the injury occurred on June 23, 2009.

In an August 19, 2009 duty status report, Dr. Gary Miller, a Board-certified orthopedic surgeon, commented that appellant routinely climbed a ladder at work for filing purposes and sustained considerable pain and swelling while doing this on June 23, 2009. In September 9 and 17, 2009 reports, he advised that she might require reconstructive knee surgery and was unable to work until further notice.

On October 5, 2009 the Office informed appellant that the evidence submitted was insufficient and requested additional evidence to establish her claim.

Appellant provided medical records dated July 6 to October 16, 2009. Nursing notes dated July 6 and 28, 2009 mentioned that she climbed and struck her right knee against a ladder five nights a week at work.

In a July 13, 2009 progress note, Dr. Devkota stated that appellant worked the night shift for the employing establishment and regularly used a ladder. She examined appellant's right knee and observed limited range of motion (ROM) due to pain and anterior swelling. Dr. Devkota diagnosed right knee arthralgia. In an August 5, 2009 physical therapy note signed by Dr. Devkota, appellant complained of work-related right knee pain as a result of repeatedly striking the knee against the rungs of a ladder in June 2009. The physical therapist referred to the July 13, 2009 x-ray indicating a previous fracture deformity of the lateral tibial plateau. Appellant denied any prior history of knee trauma. On physical examination, she exhibited impaired gait mechanics, ROM and strength deficits with mild edema and tenderness of the right medial and lateral joint lines and patellar tendon.

A July 13, 2009 x-ray report from Dr. Thangaiyan Sezhiyan, a vascular and interventional radiologist, noted a preexisting fracture deformity of the right lateral tibial plateau and no new fracture or dislocation.

In an August 6, 2009 treatment report, Dr. Miller stated that appellant "hit her knee on the ladder rung" at the employing establishment while performing her filing duties. In August 12 and 19, 2009 reports, Dr. Birkenmeier reiterated that appellant bumped her right knee against a ladder approximately six weeks earlier and diagnosed degenerative joint disease.

An August 19, 2009 x-ray report from Dr. James Walton Debnam, a Board-certified radiologist, revealed minimal degenerative arthritis of the patellofemoral and medial compartments, chondromalacia patella beneath the medial patellar facet and a slight depression

[1] Appellant later filed an occupational disease claim on November 17, 2009. The Board does not have jurisdiction over this aspect of the case. *See* 20 C.F.R. § 501.2(c).

of the lateral tibial plateau. He also noted evidence of a previously healed lateral tibial plateau fracture. In an August 26, 2009 magnetic resonance imaging (MRI) scan report, Dr. Markus Lammle, a Board-certified diagnostic radiologist, identified mild triocompartmental osteoarthritis, mild depression of the right lateral tibial plateau consistent with an old fracture deformity, mild to moderate chondrosis in medial and lateral compartment, degenerative changes in the posterior horn of medial meniscus, complex tear in the posterior horn of lateral meniscus extending into body of meniscus and small joint effusion.

In a September 10, 2009 report, Dr. Miller related that appellant complained of right knee pain and swelling and denied any prior injury. He pointed out that diagnostic testing showed a previous lateral tibial plateau fracture, a small articular cartilage defect of the medial tibia plateau and a degenerative tear of the posterior horn lateral meniscus. Dr. Miller examined appellant and observed an antalgic gait, moderate right knee effusion without erythema and generalized tenderness to palpation. He diagnosed chondrosis of the posterior aspect lateral compartment of the right and opined that the injury was possibly due to the preexisting fracture. In Dr. Miller's subsequent October 16, 2009 attending physician's report, he diagnosed knee arthralgia and checked the "yes" box in response to a form question asking whether appellant's condition was caused or aggravated by her employment.

By decision dated November 6, 2009, the Office denied appellant's claim, finding that the medical evidence was insufficient to establish that the July 20, 2009 work incident caused a traumatic injury.

Appellant requested a review of the written record on November 19, 2009 and submitted additional medical records. In a November 17, 2009 report, Dr. Miller detailed that her job duties included repetitive use of a ladder and frequent climbing, which made her prone to knocking her right knee against the rail of the ladder and led to discomfort after several months. He added that appellant's condition climaxed on June 23, 2009 when the right knee swelled significantly and could no longer bear weight. Dr. Miller examined her and observed limited ROM, atrophy of the quadriceps muscles, moderate joint effusion and knee crepitus with range. He diagnosed right knee arthropathy, lateral and medial compartment chondrosis, chondromalacia patella and posterior horn tears of the medial and lateral menisci. Dr. Miller opined:

> "There are a variety of etiologic factors involved in development of chondrosis of the knee. [Appellant] has no antecedent knee history. Her occupation requires repeated climbing of ladders and transport of heavy objects. It is considered more likely than not that [appellant's] occupational history requiring repetitive load of the knee is a main etiologic factor in the development of her current knee chondrosis. It is further suggested that the knee contusion suffered on June 23[, 2009] is the proximate cause of her arthropathy."

In attending physician's reports dated November 18, 2009 and January 29, 2010, Dr. Miller checked the "yes" box concerning whether appellant's condition was caused by her employment. He specified in the November 18, 2009 report that she sustained a work-related contusion with acute arthropathy on June 23, 2009.

By decision dated February 22, 2010, the Office hearing representative affirmed the May 21, 2009 decision, finding the medical evidence insufficient to demonstrate that appellant sustained a knee injury related to the June 23, 2009 work event.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,[3] including that she is an "employee" within the meaning of the Act and that she filed her claim within the applicable time limitation.[4] The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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.[7]

ANALYSIS

The evidence supports that appellant used a ladder at work on June 23, 2009. However, she did not provide sufficient medical evidence to establish that this employment activity caused or aggravated a right knee injury.

In a November 17, 2009 report diagnosing right knee arthropathy and chondrosis, Dr. Miller emphasized that appellant was required to climb a ladder as part of her job duties and

[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *R.C.*, 59 ECAB 427 (2008).

[5] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *T.H.*, 59 ECAB 388 (2008).

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

was susceptible to striking her knee against it. He stated that this repetitive contact debilitated the right knee so as to render it incapable of bearing weight by June 23, 2009. Dr. Miller concluded that this occupational activity was "more likely than not" the primary cause of her condition.[8] His opinion is of limited probative value as he did provide sufficient medical rationale explaining the reasons why climbing stairs on June 23, 2009 caused the diagnosed right knee injury.[9] Furthermore, Dr. Miller noted that appellant had no antecedent knee history, which conflicts with his previous September 10, 2009 report that not only acknowledged diagnostic, radiological evidence of a preexisting fracture deformity of the right lateral tibial plateau, but also posited that her condition possibly arose from this. Medical opinions based on an incomplete or inaccurate history are also of diminished probative value.[10] Dr. Miller did not otherwise explain the pathophysiological process by which appellant's recurrent striking of her right knee against a ladder on June 23, 2009 led to her diagnosed condition.[11]

Dr. Miller's other reports are also insufficient to establish the claim as they either do not address causal relationship or do not provide a reasoned opinion supporting causal relationship. In October 16 and November 18, 2009 and January 29, 2010 reports, he supported causal relationship by checking a box "yes" on a form report, are of limited probative value. The Board has held that an opinion on causal relationship consisting only of a physician checking "yes" on a medical form report without further explanation or rationale is of little probative value.[12] Although Dr. Miller added in the November 18, 2009 report that appellant sustained a work-related contusion with acute arthropathy on June 23, 2009, he did not provide sufficient rationale in support of his conclusion.

Medical records from Drs. Devkota and Birkenmeier also failed to establish appellant's claim as they offered no specific opinion regarding the cause of appellant's condition.[13] Dr. Devkota noted in a July 13, 2009 progress note that appellant used a ladder at work. In an August 5, 2009 report, she noted that appellant struck her knee against ladder rungs in June 2009. However, Dr. Devkota did not specifically relate a diagnosed condition to appellant's work on a ladder on June 23, 2009 nor did she explain the reasons why striking of the right knee on the ladder would cause a diagnosed condition. Likewise, Dr. Birkenmeier noted on August 12 and 19, 2009 that appellant bumped her knee against a ladder but she did not

[8] The Board notes that Dr. Miller's opinion that appellant's condition developed over a period of time rather than a single workday or shift is more consistent with occupational disease than traumatic injury. *See* 20 C.F.R. § 10.5(q) & (ee).

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

[10] *M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980).

[11] *Ern Reynolds*, 45 ECAB 690 (1994). *See also T.M.*, Docket No. 08-975 (issued February 6, 2009) (a medical opinion stating that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after is insufficient, without supporting rationale, to establish causal relationship).

[12] *See Alberta S. Williamson*, 47 ECAB 569 (1996).

[13] *See J.F.*, Docket No. 09-1061 (issued November 17, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

specifically attribute any diagnosed condition to a June 23, 2009 ladder incident. The record also contains several diagnostic test reports but these reports are insufficient to establish the claim as they did not address whether the June 23, 2009 work incident caused a diagnosed condition.

Appellant also submitted treatment records from nurses. However, these records have no probative medical value since nurses are not physicians as defined by the Act.[14]

Appellant argues on appeal that the Office hearing representative's decision was contrary to fact and law. As stated above, the medical evidence did not sufficiently explain how climbing a ladder on June 23, 2009 caused or contributed to appellant's injury.[15]

CONCLUSION

The Board finds that appellant did not establish that she sustained a traumatic injury in the performance of duty on June 23, 2009.

[14] *Roy L. Humphrey*, 57 ECAB 238, 242 (2005). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician); 5 U.S.C. § 8101(2).

[15] The Board notes that the record contains evidence which the Office received after its February 22, 2010 decision. The Board lacks jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 22, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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