

<sup>1</sup> The record indicates that appellant received continuation of pay from December 2, 2004 to January 16, 2005 when she utilized leave without pay.

Appellant submitted a December 8, 2004 treatment record from Dr. Pamela Cobb, an orthopedic surgeon with Kaiser Permanente. She indicated that appellant was unable to work from December 8 to 30, 2004 and diagnosed osteonecrosis of the left knee.

On February 11, 2005 the Office requested that appellant submit additional evidence in support of her claim. It requested a physician's opinion explaining how the reported work incident caused or aggravated an injury.

Appellant submitted a February 22, 2005 Form CA-20 report from Dr. Maurice Cates, an orthopedic surgeon. It listed the December 2, 2004 date of injury and noted appellant's symptoms of left knee pain. He diagnosed osteonecrosis of the medial femoral condyle and noted that appellant had been receiving physical therapy. Dr. Cates listed the first date of examination as October 19, 2004 and that appellant could return to light-duty work as of January 24, 2005. He limited walking, standing and stair climbing. A January 28, 2005 treatment note from Dr. Cobb noted a diagnosis of left knee medial femoral condyle fracture and reiterated appellant's light-duty restrictions as of January 24, 2005.

On March 18, 2005 the Office advised appellant that her claim was accepted for "sprains and strains of knee and leg, 844." Appellant was advised to submit a Form CA-7 if she claimed compensation for wage loss. She submitted claims for leave buy back for the period December 8, 2004 to January 24, 2005 and September 3 to October 1, 2005. In an email dated September 2, 2005, the employing establishment noted that it would not be able to continue appellant in a limited-duty capacity.

In a September 16, 2005 decision, the Office rescinded acceptance of appellant's claim for left knee sprain and strain. It noted that it was reopening the case as a review of the award was warranted and, on merit review, it was determined that the medical evidence did not demonstrate that the claimed medical conditions were related to the accepted work incident. The Office found that the reports of appellant's physicians consisted of excuse slips for work which did not contain a reasoned opinion that related the left knee osteonecrosis to the work incident. The Office denied appellant's claim finding that the medical evidence did not establish how appellant's diagnosed condition was caused or aggravated by her employment. Based on this determination, her claims for wage loss were denied.

### **LEGAL PRECEDENT**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. This holds true where the Office later decides that it has erroneously accepted a claim for compensation.<sup>2</sup> The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128 and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.<sup>3</sup> The Board has noted, however, that the power to annul and award is not an arbitrary one and that an award of

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<sup>2</sup> See 20 C.F.R. § 10.610.

<sup>3</sup> See *Eli Jacobs*, 32 ECAB 1147 (1981).

compensation can only be set aside in the manner provided by the compensation statute.<sup>4</sup> In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of its rationale for rescission.<sup>5</sup>

Acceptance of a traumatic injury claim is premised on an analysis of whether fact of injury has been established. Generally “fact of injury” consists of two components which must be considered in conjunction with one another. First, is whether the employee actually experienced the employment incident that is alleged to have occurred. Second, is whether the employment incident caused a personal injury and, generally, this established through the submission of probative medical evidence.<sup>6</sup> An employee must submit a physician’s rationalized medical opinion on the issue of how the alleged injury was caused or aggravated by the employment incident.<sup>7</sup> Rationalized medical opinion evidence includes a physician’s opinion on the issue of whether there is a causal relationship between the employment incident and the condition for which the employee is treated based on a complete and accurate factual and medical history. The opinion must be one of reasonable medical certainty with an explanation of the relationship between the diagnosed injury and the incident sustained by the employee.

### **ANALYSIS**

The Office accepted appellant’s claim in a March 18, 2005 letter which noted code 844, sprains and strains of the knees. The Office provided no review of the evidence submitted in support of the claim, any discussion of the December 2, 2004 employment incident or appraisal of the medical evidence of record. The Office subsequently sought to rescind its acceptance of appellant’s claim, noting primarily that the medical evidence of record did not provide any opinion from a treating physician explaining how appellant’s left knee osteonecrosis was causally related to the accepted work incident. The Office noted that the medical evidence consisted primarily of excuse slips from Kaiser Permanente physicians which did not make any reference to the December 2, 2004 incident or provide an explanation of how that incident caused or affected her knee condition.

The Board finds that the Office properly determined that the medical evidence of record was insufficient to establish that appellant sustained left knee sprains and strains causally related to the December 2, 2004 employment incident. The March 18, 2005 acceptance letter merely noted the diagnostic codes for sprains and strains of the knee, conditions which were not ever diagnosed or discussed in the medical treatment records. The medical notes from both Dr. Cobb and Dr. Cates diagnosed an osteonecrosis of the left knee. Dr. Cobb noted periods for which appellant was found disabled for work and did not ever address the issue of causal relationship. The only notation as to the December 2, 2004 work incident is the Form CA-20 attending

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<sup>4</sup> See, e.g., *Doris J. Wright*, 49 ECAB 230 (1997); *Shelby J. Rycroft*, 44 ECAB 795 (1993).

<sup>5</sup> See *Delphia Y. Jackson*, 55 ECAB \_\_\_\_ (Docket No. 04-165, issued March 10, 2004); *Paul L. Stewart*, 54 ECAB 824 (2003); *Alice M. Roberts*, 42 ECAB 747 (1991).

<sup>6</sup> See *Deborah L. Beatty*, 54 ECAB 340 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>7</sup> See *Gary L. Fowler*, 45 ECAB 365 (1994).

physician's report completed by Dr. Cates. He did not provide, however, any description of appellant's fall from a stool on that date and left unmarked the form question on causal relationship. It is clear from this evidence that appellant did not sustain "sprains or strains" of the left knee and the Office committed error in accepting the claim for this condition. The Office properly rescinded acceptance of the claim by providing clear rationale for the basis of its rescission with a review of the medical evidence submitted to the record.<sup>8</sup>

### **CONCLUSION**

The Board finds that the Office met its burden of proof to rescind acceptance of appellant's claim for left knee sprains and strains.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 16, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 17, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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<sup>8</sup> The disposition in this case does not preclude appellant from submitting additional evidence from her attending physician's addressing the causal relationship of her left knee osteonecrosis to the December 2, 2004 work incident.