United States Department of Labor
Employees' Compensation Appeals Board

K.W., Appellant	)	
and	)	**Docket No. 12-1590**
	)	**Issued: December 18, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Phoenix, AZ, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 18, 2012 appellant filed a timely appeal from a May 7, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim and a July 9, 2012 nonmerit decision denying her request for reconsideration. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a right knee injury in the performance of duty on January 9, 2012; and (2) whether OWCP properly denied her request for further merit review under 5 U.S.C. § 8128(a).

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 16, 2012 appellant, then a 29-year-old city letter carrier technician, filed a traumatic injury claim (Form CA-1) alleging right knee pain on January 9, 2012 when she was walking her route in eleven inches of snow. She first received medical care on February 9, 2012 and notified her supervisor on February 16, 2012. Appellant's supervisor controverted the claim stating that appellant never reported an injury.

By letter dated March 1, 2012, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and directed to submit it within 30 days.

In a February 22, 2012 narrative statement, appellant reported that she was delivering mail on January 9, 2012 in eleven inches of snow when her right leg began to feel as if it were being separated at the knee joint. She did not slip, trip or fall but experienced pain in her right knee during her route and was notified to return to the employing establishment because of unsafe weather conditions. Appellant began wearing a knee brace after January 9, 2012 but continued to experience constant pain and "popping" in her right knee.

By letter dated February 21, 2012, Dr. Eugenio Castillo, a treating physician, reported that appellant was treated for a right knee injury which occurred while she was working on January 9, 2012. He noted that she previously had a partial right knee replacement and excused her from work through March 9, 2012.

In a March 2, 2012 diagnostic report, Dr. Aemon Tacheira, a treating physician, reported that an imaging scan of both knees showed a right knee patellofemoral arthroplasty, mild osteoarthritic change of the right medial tibiofemoral joint and no acute osseous abnormality involving the left knee.

In a March 2, 2012 report, Kristin McCool, a physician's assistant, reported on January 9, 2012 that appellant was walking her postal route in eleven inches of snow and had to trudge in and out of the snow by lifting her knee when she began to experience right knee pain. She diagnosed right knee pain and recommended arthritis series x-rays. Ms. McCool noted that appellant had a previous patellofemoral arthroplasty because of a grade 3 lateral compartment defect which could have worsened or been irritated, potentially causing her knee pain. The medical report was not signed by a physician.

In a March 5, 2012 duty status report (Form CA-17), Dr. John Harmston, a Board-certified orthopedic surgeon, reported that appellant was walking through eleven inches of snow and felt pain in her right knee area. He diagnosed pain, swelling and limited range of motion and reported that she could return to work on March 19, 2012 with restrictions.

In a March 16, 2012 statement, appellant reported that she notified her supervisor of her injury on January 9, 2012 because she initially filed a recurrence claim (Form CA-2a) on that date. She believed that her injury qualified as a recurrence of a previous October 13, 2007 injury

but that her Form CA-2a was later returned to her, prompting her to file a Form CA-1 and allege a new traumatic occurrence.[2]

By decision dated May 7, 2012, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained an injury in connection with the accepted January 9, 2012 employment incident. It noted that the medical evidence submitted contained a diagnosis of "pain" which was generally a symptom and not a firm medical diagnosis.

On May 24, 2012 appellant requested reconsideration of the May 7, 2012 decision. She reported that she had obtained the proper documentation for her claim but that the initial delay was because her medical appointments were rescheduled. Appellant submitted a February 23, 2012 letter from the postal service which noted that it had received a Form CA-2a claim for her original October 13, 2007 injury. It was returned because it did not apply to the January 9, 2012 incident. Appellant also submitted a form documenting leave and holidays accrued in 2011 as well as a leave analysis form.

In a February 9, 2012 prescription note, Dr. Castillo reported that appellant could not return to work until she was cleared by Dr. Harmston at her February 17, 2012 appointment.

In a March 2, 2012 duty status report, Ms. McCool provided appellant with work restrictions, stating that she could return to work on March 19, 2012.

In a May 17, 2012 report, Ms. McCool, on behalf of Dr. Harmston, reported that appellant's x-rays showed no abnormalities of her right knee in comparison to her left knee. The right knee patellofemoral arthroplasty did not demonstrate any abnormalities on x-ray. Ms. McCool diagnosed right knee status post patellofemoral arthroplasty with aggravation, noting that she could not rule out any internal derangement given appellant's current symptoms. The medical report was not signed by Dr. Harmston.

By decision dated July 9, 2012, OWCP denied appellant's request for reconsideration finding that she neither raised substantive legal questions nor included new and relevant evidence establishing fact of injury.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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 FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the

[2] The Board notes that there is no other information pertaining to appellant's October 13, 2007 injury and appellant's prior claim is not currently before the Board.

employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.[4]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with 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. The first component to be established is that the employing establishment actually experienced the employment incident which is alleged to have occurred.[5] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he or she sustained an injury in the performance of duty he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.[6] Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation is causally related to the accepted injury.[7]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[8]

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[9] The opinion of the physician must be based on 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.

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[3] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Elaine Pendleton*, *supra* note 3.

[6] *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

[7] *Supra* note 5.

[8] *Betty J. Smith*, 54 ECAB 174 (2002).

[9] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[10]

ANALYSIS -- ISSUE 1

OWCP accepted that the January 9, 2012 incident occurred as alleged, appellant delivered her walking route in eleven inches of snow. The issue is whether she submitted sufficient medical evidence to establish that the employment incident caused a right knee injury. The Board finds that appellant did not submit sufficient medical evidence to establish a right knee injury causally related to the January 9, 2012 employment incident.[11] The medical evidence is deficient on two grounds: first, it fails to provide a firm diagnosis; and second, there is no well-rationalized opinion on causal relationship from a physician.

By letter dated February 21, 2012, Dr. Castillo reported that appellant was treated for a right knee injury which occurred while she was working on January 9, 2012. He noted a preexisting history of a partial right knee replacement and excused her from work through March 9, 2012. Dr. Castillo did not explain whether the incident aggravated appellant's right knee condition. In a March 5, 2012 duty status report, Dr. Harmston reported that appellant was walking through eleven inches of snow and felt pain in her right knee area. He diagnosed pain with swelling and limited range of motion. Dr. Harmston reported that appellant could return to work on March 19, 2012 with restrictions. Neither Dr. Castillo nor Dr. Harmston provided a firm medical diagnosis for her right knee condition. Pain is a general description of a symptom rather than a firm diagnosis of a medical condition.[12] The issue of causal relationship was not addressed specifically by Dr. Castillo or Dr. Harmston.

In a March 2, 2012 diagnostic report, Dr. Tacheira reported that an imaging scan of both knees showed right knee patellofemoral arthroplasty, mild osteoarthritic change of the right medial tibiofemoral joint and no acute osseous abnormality involving the left knee. His medical report did not address appellant's preexisting history of injury, the incident accepted in this case or offer any opinion regarding the cause of her condition. Identifying the previous right knee patellofemoral arthroplasty procedure and mild osteoarthritic change of the right medial tibiofemoral joint does not provide support for a traumatic injury from the January 9, 2012 employment incident. Dr. Tacheira did not discuss the work-related incident and his report is insufficient to establish appellant's claim.

The remaining medical evidence of record is also not sufficient to establish causal relation to the January 9, 2012 employment incident. The March 2, 2012 report of Ms. McCool, a physician's assistant, is not probative. Registered nurses, licensed practical nurses and

[10] *James Mack*, 43 ECAB 321 (1991).

[11] *See Robert Broome*, 55 ECAB 339 (2004).

[12] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

physicians assistants are not physicians as defined under FECA and their opinions are of no probative value.[13] The report was not signed by Dr. Harmston. It is well established that a physician's signature is required on a report in order for it to be considered as medical evidence.[14]

The Board finds that appellant did not submit rationalized medical evidence to establish that the accepted January 9, 2012 employment incident, caused or aggravated her right knee condition.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA, its regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.[15] Section 10.608(b) of OWCP regulations provide that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.[16]

ANALYSIS -- ISSUE 2

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

In a May 24, 2012 statement, appellant reported that she obtained the proper documentation for her claim but that delay was due to medical appointments being rescheduled. She also submitted a February 23, 2012 letter from the employing establishment which noted that her Form CA-2a for her original October 13, 2007 injury was being returned because it did not apply to the January 9, 2012 incident.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the

[13] 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.

[14] *B.M.*, Docket No. 11-725 (issued February 17, 2012).

[15] *D.K.*, 59 ECAB 141 (2007).

[16] *K.H.*, 59 ECAB 495 (2008).

claim. In her May 24, 2012 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument. Appellant's argument was that her injury was employment related and she delayed filing her claim because she initially thought that this was a recurrence claim. The underlying issue in this case is not a question of paperwork. Rather, the question is whether appellant established an injury causally related to the accepted January 9, 2012 employment incident. That is a medical issue which must be addressed by relevant medical evidence.[17]

While the February 23, 2012 letter from the employing establishment and leave analysis forms are new evidence, they are not relevant to the issue for which OWCP denied appellant's claim. The evidence does not include a physician's rationalized opinion on the issue of causal relationship between appellants' alleged injury and the January 9, 2012 incident. Ms. McCool's March 2, 2012 duty status report and May 17, 2012 report is not considered probative medical evidence because physician's assistants are not considered physicians under FECA.[18] While Dr. Castillo's February 9, 2012 prescription note is new evidence from a qualified physician, it does not provide a firm medical diagnosis. As the evidence submitted does not address the issue on which OWCP's decision was based, namely, medical evidence that establishes a diagnosis causally related to the January 9, 2012 employment incident, it is not relevant. A claimant may be entitled to a merit review by submitting new and relevant evidence, but appellant did not submit any relevant medical evidence in this case.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a right knee injury on January 9, 2012 in the performance of duty. OWCP properly denied her request for reconsideration without a merit review.

[17] *See Bobbie F. Cowart*, 55 ECAB 746 (2004).

[18] *Supra* note 13.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated July 9 and May 7, 2012 are affirmed.

Issued: December 18, 2012
Washington, DC

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

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

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