

**United States Department of Labor
Employees' Compensation Appeals Board**

D.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bellmawr, NJ, Employer**

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**Docket No. 12-1719
Issued: May 13, 2013**

Appearances:

Thomas R. Uliase, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 14, 2012 appellant, through her attorney, filed a timely appeal from a May 14, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an injury on September 10, 2010 in the performance of duty.

FACTUAL HISTORY

On November 18, 2010 appellant, then a 51-year-old part-time flexible letter carrier, filed a traumatic injury claim alleging that on September 10, 2010 she injured her left knee and right elbow in the performance of duty. She related that, while at a stop waiting to turn left out of the

¹ 5 U.S.C. § 8101 *et seq.*

parking lot of the employing establishment on her motorbike, she was hit by a car turning into the lot. The employing establishment controverted the claim, arguing that appellant was off the clock at the time the injury occurred and not in the performance of duty. It indicated that her work hours were 7:30 a.m. to 4:00 p.m.

On June 2, 2011 OWCP requested that appellant submit additional factual and medical information in support of her claim. By decision dated July 7, 2011, it denied her claim after finding that the medical evidence was insufficient to show that she sustained an injury causally related to the accepted work incident.

A police report dated September 10, 2010, received by OWCP on July 8, 2011, indicated that appellant was stopped in traffic exiting the employing establishment's parking lot at 4:31 p.m. when she was struck by another vehicle. An accompanying diagram shows her position waiting to leave the parking lot of the employing establishment.

In a report dated September 29, 2010, Dr. R. Robert Franks, an osteopath, stated:

"On September 10, 2010 [appellant] was stopped on her moped when an SUV [sport utility vehicle] was coming right at her. She is not exactly sure what she did at that time, but she feels like she may have tried to jump off the moped. [Appellant] is not sure if the car hit her within the knee. She is also not sure if she struck her knee on the moped. [Appellant] knows she hit it on the ground. She is not sure if it was all three objects that hit her or one or two of the three. There are no mechanical symptoms. [Appellant] has no locking, catching or buckling. Most the pain is retropatellar. There is no effusion. [Appellant] was seen in the emergency room where x-rays were obtained."

On examination Dr. Franks found pain on palpation of the patellar head, medial and lateral joint line and patella crepitus. He diagnosed a left knee contusion and ruled out a meniscal tear. Dr. Franks recommended a magnetic resonance imaging (MRI) scan study. He placed appellant in a brace and found that she could work limited duty.

An MRI scan of the left knee, obtained on October 5, 2010, revealed "[n]o apparent meniscal or ligament injury."

In a report dated November 10, 2010, Dr. Merrick J. Wetzler, a Board-certified orthopedic surgeon, evaluated appellant for left knee and right elbow pain subsequent to a fall on September 10, 2010. On examination he found elbow pain with palpation and pain over the medial joint and tibial plateau of the knee. Dr. Wetzler related that he would reevaluate the knee after physical therapy and recommended an MRI scan study of the right elbow. He found that appellant could work limited duty. In a progress report dated November 23, 2010, Dr. Wetzler noted that an MRI scan study of the right elbow revealed lateral epicondylitis.

The record contains progress reports from Dr. Wetzler dated January to May 2011. On April 7, 2011 Dr. Wetzler performed a lateral release and plica excision of the left knee.

On July 19, 2011 appellant, through her attorney, requested an oral hearing before an OWCP hearing representative. At the hearing, held on February 28, 2012, she related that she

had clocked out from the employing establishment five minutes prior to the accident.² Appellant was at the edge of the parking lot waiting to make a left when a car hit her head on. An ambulance took her to the hospital for x-rays.³ Appellant missed a few days of work and then returned with restrictions. She resumed full-duty employment in September 2011 following her April 2011 left knee surgery. Appellant's attorney noted that a police diagram indicated that appellant was on the premises when the injury occurred.

By decision dated May 14, 2012, an OWCP hearing representative affirmed the July 7, 2011 decision. The hearing representative found that the medical evidence was insufficient to show that appellant sustained a diagnosed condition due to the September 10, 2010 employment incident.

On appeal appellant's attorney argues that she has submitted sufficient evidence to establish that she sustained an injury on September 10, 2010 or to require further development of the evidence.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁸ An employee may establish that the employment incident

² OWCP provided the employing establishment with a copy of the hearing transcript.

³ A left knee x-ray dated September 10, 2010 showed normal findings.

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁶ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁷ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁸ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁹

Not all medical opinions require rationale. In a simple traumatic injury, such as a knife cut that is reported to and seen by a physician promptly, there is no need to obtain a rationalized explanation of causal relationship. When the relationship is not obvious or when there may have been an intervening nonoccupational cause, it is essential that the physician give his or her medical reasons for relating the condition to the history obtained.¹⁰

ANALYSIS

Appellant alleged that she sustained an injury to her left knee and right elbow on September 10, 2010 when she was hit by a car while waiting to leave the parking lot of the employing establishment after clocking out of work for the day. The employing establishment did not dispute that she was on the premises at the time of the injury but instead maintained that her injury occurred after her duty shift. Appellant indicated at the hearing that her injury occurred five minutes after she clocked out of work and her statement was not subsequently challenged by the employing establishment.¹¹ OWCP accepted that the September 10, 2010 incident occurred at the time, place and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that she sustained an injury as a result of this incident.

The Board finds that appellant has established that she sustained a knee contusion causally related to the September 10, 2010 employment incident. She received treatment in the emergency room the day of the incident. An x-ray of the left knee obtained on September 10, 2010 was normal. In a report dated September 29, 2010, Dr. Franks described the September 10, 2010 work injury and listed findings on examination of patella crepitus and pain. He diagnosed a left knee contusion and to rule out a meniscal tear. Dr. Franks offered no rationale to explain how being struck by a motor vehicle resulted in the knee contusion. However, given the nature of the injury and the rather obvious relationship, the Board finds this situation falls within the exception where no need for rationalized medical evidence regarding the cause of appellant's knee contusion is necessary.¹² Appellant has established that she sustained a knee contusion on September 10, 2010 in the performance of duty. Upon return of the case record, OWCP should determine whether she sustained any disability causally related to the accepted left knee contusion.

⁹ *Id.*

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating the Medical Evidence*, Chapter 2.810.5.c (September 2010); *see also R.R.*, Docket No. 06-1975 (issued January 18, 2007).

¹¹ An injury to an employee going to or coming from work before or after working hours or at lunch, while on the premises of the employer, is compensable. *See D.L.*, 58 ECAB 667 (2007); *Emma Varnerin, M.D.*, 14 ECAB 253 (1963). This includes a reasonable interval before or after working hours while the employee is on the premises engaging in preparatory or incidental acts. *Id.*

¹² *See R.R.*, *supra* note 10.

The medical evidence, however, is insufficient to show that appellant sustained any additional conditions or required surgery as a result of her work injury. On November 10, 2010 Dr. Wetzler evaluated appellant for pain in the left knee and right elbow following a fall. He referred her for physical therapy. Dr. Wetzler provided progress reports dated January to May 2011. He did not discuss the history of injury or provide any diagnosis or causation finding and thus his opinion is of little probative value.¹³ On April 7, 2011 Dr. Wetzler operated on appellant's left knee. He did not address the cause of her knee surgery and, thus, his opinion is insufficient to show that the surgery was medically necessary as a result of the September 10, 2010 work injury.¹⁴

On appeal appellant's attorney maintains that the evidence shows that she sustained an injury on September 10, 2010. As discussed, the evidence is sufficient to show that she incurred a left knee contusion as a result of the September 10, 2010 motor vehicle accident but insufficient to show that she sustained any other condition or required surgery.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has established that she sustained a left knee contusion on September 10, 2010 in the performance of duty. The Board further finds that she has not met her burden of proof to establish any further left knee condition, a right elbow condition or the need for surgery on her left knee causally related to the September 10, 2010 employment injury.

¹³ See *John W. Montoya*, 54 ECAB 306 (2003) (a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition).

¹⁴ See *K.W.*, 59 ECAB 271 (2007) (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).

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2012 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part.

Issued: May 13, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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