

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

G.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
North Babylon, NY, Employer**

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**Docket No. 14-494
Issued: June 10, 2014**

Appearances:

Thomas S. Harkins, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge

ALEC J. KOROMILAS, Alternate Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 2, 2014 appellant, through her attorney, filed a timely appeal from an August 8, 2013 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 has established that she sustained a traumatic left knee injury in the performance of duty.

On appeal, counsel contends that OWCP committed legal error by denying appellant's claim as the medical evidence and legal arguments submitted on reconsideration established fact of injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 9, 2012 appellant, then a 47-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 7, 2012 she twisted her left knee when stepping from her postal truck. She sought treatment on February 8, 2012 from Dr. Anthony Termini, an attending osteopathic physician, who diagnosed a possible ruptured popliteal cyst.² Appellant stopped work on February 10, 2012.

Dr. Kevin G. Vesey, an attending Board-certified orthopedic surgeon, followed appellant beginning February 15, 2012. In February 15 and 17, 2012 reports, he provided a history of the February 7, 2012 injury. On examination, Dr. Vesey found mild effusion of the left knee with medial joint line tenderness. He diagnosed a Baker's cyst and possible torn medial meniscus. In a February 24, 2012 report, Dr. Vesey opined that a magnetic resonance imaging (MRI) scan of the left knee showed degenerative arthritis and slight degeneration of the "medial meniscus with a possible slight tear" and a possible ruptured popliteal cyst. He held appellant off work.

In a March 7, 2012 letter, OWCP advised appellant of the additional evidence needed to establish her claim, including a statement from her doctor explaining the medical reasons why stepping out of her postal vehicle would cause the claimed knee injury. It afforded her 30 days to submit such evidence.

In response, appellant submitted a March 16, 2012 report from Dr. Vesey noting continued medial joint line tenderness and stiffness in the left knee despite participation in physical therapy. Dr. Vesey opined that she should undergo left knee arthroscopy as she was not improving. He stated that appellant related "the onset of these symptoms to an on-the-job injury, where she twisted her knee while getting out of a postal truck. There is good correlation between the location of [appellant's] symptoms and the findings of the MRI scan. [T]he history, as given by [her], supports causal nature of the injury in development of [her] complaint." Dr. Vesey requested authorization for arthroscopic medial meniscectomy, debridement and chondroplasty.

By decision dated April 9, 2012, OWCP denied appellant's claim on the grounds that causal relationship was not established. It accepted that the February 7, 2012 incident occurred at the time, place and in the manner alleged. OWCP found, however, that appellant's physicians did not provide medical reasoning explaining how stepping out of her postal vehicle on February 7, 2012 would cause the diagnosed left knee conditions.

² February 9, 2012 left knee x-rays were negative for fracture and dislocation. A February 9, 2012 sonogram of the left knee showed a left popliteal cyst extending into the proximal left calf, measuring 6.4 x 1.0 x 2.1 centimeters. A February 11, 2012 venous Doppler study of the left lower extremity was negative for deep venous thrombosis.

In an April 24, 2012 letter, appellant requested a review of the written record. She again asserted that she sustained an “on-the-job injury do to my stepping out of my truck and twisting my knee which caused pain and a pop in my knee.” Appellant submitted a February 8, 2012 employing establishment form in which she refused medical attention after reporting her left knee injury.

A February 20, 2012 MRI scan of the left knee showed mild effusion with “slight scattered irregular synovial thickening,” a “lobulated posteromedial popliteal cyst” associated with “edema within the [adjacent] soft tissues posteriorly about the knee extending into the visualized proximal leg and contiguous with the posteromedial popliteal cyst and possibility of cyst rupture,” degenerative osteoarthritis of the patellofemoral and medial compartments, slight degeneration and a possible tear of the posterior horn of the medial meniscus and cystic synovial proliferation adjacent to the anterior aspect of the medial compartment.

In an April 18, 2012 report, Dr. Vesey stated that appellant had “a causal relationship being that she twisted her left knee on the date of injury as given by her as February 7, 2012. Appellant has persistent medial joint line pain” without radiographic evidence of osteoarthritis. An MRI scan demonstrated subclinical osteoarthritis, insufficient to cause her symptoms.

By decision issued August 23, 2012, an OWCP hearing representative affirmed the April 9, 2012 decision, finding that Dr. Vesey did not explain how stepping from a postal vehicle on February 7, 2012 would cause or aggravate any of the diagnosed left knee conditions.

In a September 2, 2012 letter, appellant requested reconsideration. She noted that she had been off work from February 7 to July 23, 2012 due to left knee pain and April 30, 2012 surgery. Appellant again stopped work on September 7, 2012 pending left knee surgery scheduled for September 10, 2012. Counsel submitted a May 9, 2013 brief asserting that new medical evidence from Dr. Vesey was sufficient to establish causal relationship.³ Appellant submitted additional medical evidence.

In an April 30, 2012 report, Dr. Vesey noted performing a left knee arthroscopy and partial medial meniscectomy. He diagnosed a medial meniscus tear.

In a March 25, 2013 report, Dr. Vesey noted that appellant “was getting out of her truck at her job and twisted her left knee on February 7, 2012,” with the onset of pain localized to the medial joint line. “[Appellant] reported no prior injury to the knee at any time in the past.” He noted mild, transient left knee symptoms prior to February 7, 2012 for which she received no evaluation or treatment. Dr. Vesey noted that the very mild, subclinical osteoarthritis visible on MRI scan was of no clinical or symptomatic significance. He explained that on April 30, 2012 arthroscopy he found a “radial tear of the medial meniscus” with “mild degenerative changes mostly around the patella.” Three weeks after surgery, Dr. Vesey aspirated the Baker’s cyst. After a return to limited duty from June to August 2012, appellant again stopped work due to increasing left knee symptoms. Dr. Vesey performed a September 10, 2012 repeat left knee arthroscopy with “further resection of the medial meniscus and debridement of the patellofemoral joint, medial femoral condyle.” He also reaspirated the Baker’s cyst. Dr. Vesey

³ On May 20, 2013 OWCP issued a decision approving an attorney’s fee request. This decision is not before the Board on the present appeal.

diagnosed mild osteoarthritis of the left knee and a torn meniscus. He explained that “[t]he torn meniscus is felt to be related to the trauma sustained when she was getting off her truck. The osteoarthritis of the knee cannot be explained fully by the traumatic incident.”

By decision issued August 8, 2013, OWCP denied modification on the grounds that the evidence submitted in support of appellant’s request for reconsideration was insufficient to warrant modifying the prior decision. It found that Dr. Vesey’s March 25, 2013 report was speculative due to his use of the term “felt to be” and therefore insufficient to establish causal relationship.

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

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁷ An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁸ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹

Rationalized medical opinion evidence is generally required to establish causal relationship. 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.¹⁰

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ *S.N.*, Docket No. 12-1222 (issued August 23, 2013); *Tia L. Love*, 40 ECAB 586, 590 (1989).

⁹ *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS

Appellant claimed that she injured her left knee on February 7, 2012 when stepping from her postal vehicle. OWCP accepted that the February 7, 2012 incident occurred at the time, place and in the manner alleged. It denied the claim on the grounds that causal relationship was not established.

Dr. Vesey, appellant's attending Board-certified orthopedic surgeon, consistently opined that stepping from the truck on February 7, 2012 caused appellant's torn left medial meniscus. He provided a complete, accurate and consistent history of injury in his reports from February 15, 2012 through March 25, 2013. In February 15, 17, March 16, April 18 and March 25, 2013 reports, Dr. Vesey stated that, on February 7, 2012, appellant twisted her left knee while stepping from her postal truck. The Board notes that there is no other medical opinion or factual statement of record alleging a different mechanism of injury.

Dr. Vesey also provided consistent, detailed support for a causal relationship between the February 7, 2012 incident and the diagnosed radial medial tear as visualized during April 30 and September 10, 2012 arthroscopies. He explained that appellant's left knee pain since its onset on February 7, 2012 was localized to the medial joint line, indicative of a meniscal tear, differentiated from subclinical osteoarthritis of the left knee visible on imaging studies. In his March 16, 2012 report, Dr. Vesey stated that there was "good correlation between the location of her symptoms and the findings of the MRI scan. [T]he history, as given by [appellant], supports causal nature of the injury in development of [her] complaint." Dr. Vesey opined on March 25, 2013 that "[t]he torn meniscus is felt to be related to the trauma sustained when she was getting off her truck. The osteoarthritis of the knee cannot be explained fully by the traumatic incident." Dr. Vesey thus supports a causal relationship between the February 7, 2012 incident and the left meniscal tear, while explaining that the subclinical osteoarthritis was not related.

The Board finds that, while Dr. Vesey's opinion is not sufficiently rationalized¹¹ to meet appellant's burden of proof in establishing her claim, there are no opposing medical opinions of record. Coupled with the consistent history of injury and OWCP's acceptance of the February 7, 2012 incident as factual, Dr. Vesey's reports are of sufficient quality to require further development of the case by OWCP.¹²

However, OWCP did not undertake further development of the medical record, such as referring the record to an OWCP medical adviser or referring appellant for a second opinion examination. In view of the above evidence, the Board finds that it should have referred the matter to an appropriate medical specialist to determine whether stepping out of the truck on February 7, 2012 caused or aggravated a left knee injury.

¹¹ See *Frank D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹² *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹³ The case must be remanded to OWCP for preparation of a statement of accepted facts and referral of the matter to an appropriate medical specialist, consistent with OWCP's procedures, to determine whether appellant sustained a left knee injury in the performance of duty as alleged. Following this and any other development deemed necessary, OWCP shall issue an appropriate decision in the case.

On appeal, counsel contends that OWCP committed legal error by denying appellant's claim as the medical evidence and legal arguments submitted on reconsideration established fact of injury. As stated, the case is not in posture for decision. The case will be remanded for further development.

CONCLUSION

The Board finds that the case is not in posture for a decision. The case will be remanded to OWCP for additional development.

¹³ *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 8, 2013 is set aside, and the case remanded for additional development consistent with this decision and order.

Issued: June 10, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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