United States Department of Labor
Employees' Compensation Appeals Board

MONIQUE A. LAROCHE, Appellant	)	
and	)	**Docket No. 06-476**
	)	**Issued: June 7, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Newington, CT, Employer	)	

Appearances:
Monique A. Laroche, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 22, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' hearing representative's decision dated September 19, 2005 which found that she did not sustain an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained an injury in the performance of duty on April 26, 2004.

FACTUAL HISTORY

On April 26, 2004 appellant, then a 33-year-old letter carrier, filed a traumatic injury claim alleging that on that date she injured the front of her right knee and felt a "sharp pain" as she stepped down from her postal vehicle while in the performance of duty. The employing establishment controverted the claim for continuation of pay and indicated that appellant was on light duty due to a preexisting condition which resulted in her having problems with walking.

The employing establishment indicated that appellant could not complete the walking portion of her route. Appellant did not stop work.[1]

By letter dated May 10, 2004, the employing establishment addressed appellant's preexisting problems. On March 17, 2003 appellant had requested light duty for an "off-the-job condition to her knee." She was "unable to complete the walking portion of her route and she would take one hour of sick leave and hand off the one hour of walking on her route." It was contended that appellant only filed the notice of traumatic injury after her request for light duty was denied. The Office also received a copy of appellant's March 17, 2003 request for light duty due to her knee.

An April 26, 2004 duty status report, signed by a physician's assistant, noted that appellant was stepping out of her postal vehicle when she had sharp pain in her right knee. She noted tenderness on the medial joint line and diagnosed knee pain and a questionable medial meniscus tear. Appellant could return to work in a light-duty capacity with prescribed light-duty restrictions. In a May 3, 2004 report, a physician whose signature is illegible, repeated the findings and indicated that appellant had degenerative joint disease. She submitted additional reports from physician's assistants and physicians whose signatures are illegible.

In an April 20, 2004 report, Dr. Gary F. Ierna, a chiropractor, diagnosed medial cruciate ligament sprain and advised that appellant could return to work with restrictions. He also requested therapy and treatment three times a week for two weeks. Dr. Ierna continued to treat appellant and submit reports.

In a May 4, 2004 attending physician's report, Dr. Ronald Leavitt, a Board-certified orthopedic surgeon, noted that appellant twisted her right knee while stepping out of a vehicle at work on April 26, 2004. He indicated that appellant had a prior history of knee pain and swelling and apparent degenerative joint disease. X-rays showed mild degenerative joint disease. Dr. Leavitt noted that physical examination demonstrated effusion and diagnosed "a possible torn medial meniscus." He checked the box "yes" in response to whether he believed the condition was caused or aggravated by an employment activity and opined that appellant was partially disabled with limited walking and no climbing stairs or ladders. Appellant underwent a course of physical therapy.

In duty status reports dated July 16, 2004, a physician whose signature is illegible, noted that appellant had some improvement with medication, and therapy but had "plateaued." The physician indicated the examination was notable for significant obesity and referred appellant to an orthopedic surgeon. On August 26, 2004 the physician recommended surgery.

In an August 6, 2004 report, Dr. Christopher Lena, a Board-certified orthopedic surgeon noted that appellant had "a twisting injury to her knee in April 2004." He advised that she had some improvement with medication and therapy but had "plateaued" and was presently on modified duty. Dr. Lena related that appellant indicated that her "injury occurred while she stepped out of a vehicle," and had a "sharp increase in her knee pain." He indicated that appellant had not improved with conservative measures and that her past medical history was

[1] However, she accepted a modified assignment on July 1, 2004.

"significant for headaches, all else is normal." Dr. Lena conducted a physical examination and reported that appellant was obese with venous stasis changes throughout her lower extremities with pitting edema distally. He examined appellant's knee and indicated that she did not open up to varus/valgus stress testing, and did not open to anterior or posterior instability testing also noted tenderness over the medial aspect of the knee in the region of the medial cruciate ligament (MCL) and over the medial meniscus and recommended a magnetic resonance imaging (MRI) scan. In an August 26, 2004 report, Dr. Lena noted that the MRI scan revealed a tear in the discoid lateral meniscus as well as an anterior and posterior horn tear at the medial meniscus and recommended surgery.

By letter dated September 22, 2004, the Office informed appellant of the type of evidence needed to support her claim and requested that she submit such evidence within 30 days.

The Office subsequently received a September 14, 2004 report in which Dr. Lena noted that appellant had another work-related injury when she was walking on uneven ground and had a giving way episode of her knee. He believed it was appellant's meniscal tear giving her significant discomfort and indicated that appellant was scheduled for a meniscectomy. In a September 30, 2004 report, Dr. Lena examined appellant, and noted that she was having difficulty getting her knee surgery approved. He indicated that he would return her to light duty with no stair climbing and a more sedentary position and recommended arthroscopy for debridement of the meniscus.

In a statement dated October 21, 2004, appellant indicated that she stepped out of her vehicle and felt a sharp pain in her right knee. She indicated that she was fine prior to that time and had previously been diagnosed with "slight arthritis" in her right knee.

By decision dated November 5, 2004, the Office denied appellant's claim on the grounds that she did not establish an injury as alleged.[2] The Office found that there was no medical evidence supporting that the accepted employment incident caused a diagnosed condition.

On November 27, 2004 appellant requested a hearing, which was held on July 14, 2005.[3]

Dr. Leavitt submitted treatment records for the period November 6, 2002 through May 4, 2004, which included a history of a slip and fall on ice in December 2002. On March 31, 2004 Dr. Leavitt reviewed the results of the MRI scan and diagnosed a discoid lateral meniscus and degenerative signals in the medial meniscus but no true tear. He noted that the knee was bothering appellant less and she had not had recurrent episodes of giving out. Dr. Leavitt recommended leaving things alone and opined that arthroscopy did not appear in the absence of more impressive findings and symptoms. A March 15, 2004 MRI scan of the right knee, which

[2] The Office noted that the evidence suggested a subsequent injury in September 2004; however, any such injury is not addressed in the present claim.

[3] During the hearing, appellant testified that she had had previous problems with her right knee dating back to 2002, and sought treatment with Dr. Leavitt, who prescribed anti-inflammatory medication. She also indicated that she was on modified work in March 2003 because of problems related to walking and climbing stairs. Appellant testified that, when she stepped out of the truck on April 26, 2004, there was a sharp pain and that she may have twisted her knee, but she was not certain.

showed a partial interstitial tear of the anterior cruciate ligament and a discoid lateral meniscus with no evidence of meniscal tear. On August 26, 2004 Dr. Lena noted the results of the MRI scan and recommended right knee arthroscopy and debridement of the medial and lateral meniscal tears.

In a July 20, 2005 report, Dr. Lena repeated the history of injury and noted the results of an MRI scan of the right knee performed on August 12, 2004, which included that appellant had a discoid lateral meniscus with significant degeneration and tearing, as well as osteoarthritis involving the medial and lateral components. He explained that appellant had another "work-related injury in September 2004 where she feels the knee gave way on her." Dr. Lena opined that it was an "exacerbation of her underlying condition but that the need for her surgical procedure dates back to the April 26[, 2004] work-related injury."

By decision dated September 19, 2005, the Office hearing representative affirmed the November 5, 2004 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[4] 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act[5] and that an injury was sustained in the performance of duty.[6] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[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]

ANALYSIS

Appellant alleged that she stepped out of a vehicle at work and injured her knee. While appellant is not certain with regard to whether she twisted her knee when she stepped out, there

[4] 5 U.S.C. §§ 8101-8193.

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

[6] *James E. Chadden Sr.*, 40 ECAB 312 (1988).

[7] *Delores C. Ellyet*, 41 ECAB 992 (1990).

[8] *John J. Carlone*, 41 ECAB 354 (1989).

[9] *Id*.

is no dispute that appellant stepped out of her postal vehicle on April 26, 2004. The Board finds that the first component of fact of injury, the claimed incident -- stepping out of her vehicle at work, occurred as alleged.

However, the medical evidence is insufficient to establish the second component of fact of injury, that the employment incident caused an injury. The medical reports of record do not establish that the stepping down from appellant's postal vehicle caused a personal injury. The medical evidence contains no firm diagnosis, no rationale and no explanation of the mechanism of injury.

Appellant submitted several reports from Dr. Leavitt. In a May 4, 2004 report, he indicated that appellant twisted her right knee while stepping out of a vehicle at work on April 26, 2004. Dr. Leavitt also indicated that appellant had a prior history of knee pain and swelling and degenerative joint disease and diagnosed "a possible torn medial meniscus." He checked a box "yes" in support of causal relationship. However, the checking of a box "yes" in a form report, without additional medical explanation or rationale, is not sufficient to establish causal relationship.[10] Rationale in support of an opinion on causal relationship is especially important in a case such as this where appellant had a preexisting knee condition. Other reports from Dr. Leavitt relate to his treatment for appellant's preexisting condition but do not address the April 26, 2004 employment incident.

Appellant also submitted several reports from Dr. Lena, including an August 6, 2004 report in which he also noted that appellant had "a twisting injury to her knee in April 2004." As noted above, this description alone, would not be inaccurate or enough to invalidate the physician's report. Furthermore, he related that appellant indicated that her "injury occurred while she stepped out of a vehicle," and had a "sharp increase in her knee pain." However, Dr. Lena indicated that appellant's past medical history was "significant for headaches, all else is normal." The Board notes that this history is inaccurate. Medical evidence predicated on unsubstantiated diagnoses or factual or medical history is of diminished probative value.[11] Therefore, his reports are also of limited probative value as he does not appear to be aware of appellant's preexisting condition nor did he otherwise provide medical reasoning to support his conclusion on causal relationship.

Appellant submitted numerous chiropractic notes. However, in assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under section 8101(2) of the Act.[12] A chiropractor is not considered a physician under the Act unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist. Thus, where x-rays do not demonstrate a spinal subluxation, a chiropractor is not considered a "physician," and his or her reports cannot be considered as competent medical evidence under

[10] *Linda Thompson*, 51 ECAB 694 (2000); *Calvin E. King*, 51 ECAB 394 (2000).

[11] *See Bille C. Rae*, 43 ECAB 192 (1991).

[12] 5 U.S.C. § 8101(2).

the Act.[13] In this case, the record does not indicate that a subluxation of the spine was diagnosed. Therefore, Dr. Ierna's reports cannot be considered those of a physician and are of no probative value. Further, a chiropractor's treatment is limited to manipulation of the spine. Appellant also submitted several reports from a physician's assistant. However, reports from a physician's assistant are of no probative weight because physician's assistants are not physicians pursuant to section 8101(2) of the Act.[14] Similarly, appellant submitted reports from physical therapists. However, physical therapists are also not physicians under the Act. Thus, their opinions do not constitute medical evidence and have no weight or probative value.[15] The Office received several diagnostic reports and reports from a physician with an illegible signature. However, these reports did not contain a specific opinion relating a diagnosed condition to the April 26, 2005 employment incident.

Because the medical reports submitted by appellant do not adequately address how the April 26, 2004 incident caused or aggravated a right knee injury, they are of diminished probative value and are insufficient to establish that the April 26, 2004 employment incident caused or aggravated a specific injury.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

[13] *See Thomas W. Stevens*, 50 ECAB 288(1999); *see also Susan M. Herman*, 35 ECAB 669 (1984). In any event, the Board has held that a chiropractor is not a physician for the purposes of calculating a schedule award. *George E. Williams*, 44 ECAB 530, 534 (1993).

[14] 5 U.S.C. § 8101(2). *See Lyle E. Dayberry*, 49 ECAB 369 (1998). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

[15] *See Jan A. White*, 34 ECAB 515, 518 (1983).

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2005 Office of Workers' Compensation Programs' hearing representative's decision is affirmed.

Issued: June 7, 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