United States Department of Labor
Employees' Compensation Appeals Board

L.I., Appellant	)	
and	)	**Docket No. 11-575**
	)	**Issued: September 29, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Bethpage, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On January 6, 2011 appellant filed a timely appeal from a December 8, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)[1] 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 OWCP met its burden of proof to terminate appellant's compensation for wage-loss and medical benefits as of December 8, 2010 for the accepted right knee sprain.

FACTUAL HISTORY

On July 14, 2010 appellant, then a 37-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her right knee when it was struck by a

[1] 5 U.S.C. § 8101 *et seq.*

wire cage. OWCP accepted the claim for a right knee sprain. Appellant stopped working and received compensation for wage loss.

In a report dated September 22, 2010, Dr. Eric Senat, an orthopedic surgeon, provided a history and noted that appellant was seen for right knee pain. He indicated that she had fallen sometime in May 2010, with x-rays on May 3, 2010 and at the time of the July 14, 2010 injury. Dr. Senat advised that a magnetic resonance imaging (MRI) scan on September 10, 2010 found a torn anterior medial meniscus, partial tear of the medial collateral ligament (MCL), lateral patellar subluxation with patellofemoral chondromalacia. He requested authorization for right knee arthroscopic surgery. In an attending physician's report (Form CA-20) dated September 20, 2010, Dr. Senat diagnosed a meniscal tear with MCL sprain and checked a box "yes" that the conditions were causally related to employment.

OWCP referred appellant for a second opinion evaluation by Dr. Robert Orlandi, an orthopedic surgeon. In a report dated October 28, 2010, Dr. Orlandi reviewed the history of injury and results on examination. He stated that the MRI scan was equivocal in its findings as there was no increased T2 uptake and the size of the tear was not described. Dr. Orlandi diagnosed a resolved right knee strain. According to him, examination of the knee examination was normal, with no effusion or ligament instability or quadriceps atrophy. Dr. Orlandi stated, "The McMurray maneuvers for meniscal tears are negative and tears at the anterior horn of a meniscus are almost always associated with at least mild osteoarthritis of the knee (posterior horn tears are traumatic)." He described the MRI scan interpretation as unacceptable and stated that appellant could work without restrictions.

On November 1, 2010 appellant submitted an August 4, 2010 report from Dr. Vladimir Shur, an orthopedic surgeon, who noted that she was injured at work a few weeks earlier. Dr. Shur provided results on examination and stated that she had a work-related injury consistent with an anterior cruciate ligament and medical meniscal tear at the very least.

By letter dated November 3, 2010, OWCP advised appellant that it proposed to terminate her compensation for wage-loss and medical benefits. It found the weight of the medical evidence was represented by Dr. Orlandi.

Appellant submitted additional medical evidence. In a CA-20 form report dated October 26, 2010, Dr. Senat provided a history of injury and diagnosed a right medial meniscus tear with MCL sprain. He checked a box "yes" that the condition was caused or aggravated by employment. Dr. Senat provided a similar CA-20 form dated November 23, 2010.

In a treatment note dated November 11, 2010, Dr. Leonard Bleicher, a physiatrist, noted that appellant continued to have intermittent pain in the right knee. He indicated that he had reviewed Dr. Orlandi's report and opined that the second opinion physician had "misrepresented clinical information" in her chart and disregarded clinical recommendations and the presence of right calf muscular atrophy. Dr. Bleicher stated that appellant continued to be totally disabled.

By decision dated December 8, 2010, OWCP terminated compensation for wage-loss and medical benefits.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[2]

The Board has noted that in assessing medical evidence the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed is support of the physician's opinion.[3]

ANALYSIS

The accepted condition in this case was a right knee sprain. With respect to this condition, it is OWCP's burden of proof to terminate compensation. The second opinion physician, Dr. Orlandi, found that the accepted sprain had resolved. He provided a complete report with an unequivocal medical opinion on the issue. None of appellant's attending physicians offered a medical opinion regarding a continuing employment-related right knee sprain or provide a diagnosis of a right knee sprain. The Board finds the weight of the evidence, with respect to the accepted injury, rested with Dr. Orlandi. Therefore, OWCP met its burden of proof to terminate compensation for the accepted right knee sprain.

There remains an issue as to whether appellant has established any additional conditions causally related to the employment injury.[4] In this regard the report from the second opinion physician indicated that he was not convinced that the interpretation of a meniscal tear, as shown by a September 10, 2010 MRI scan, was substantiated. Dr. Orlandi also indicated that an anterior meniscal tear was more likely associated with osteoarthritis, rather than a traumatic injury.

Dr. Orlandi provided a factual and medical background and offered a rationalized opinion indicating that appellant did not have any additional employment-related knee conditions. On the other hand her physicians did not provide a medical opinion with supporting rationale that was based on a complete background. Dr. Shur did not provide a history or other background, other than to note appellant had hurt her knee a few weeks earlier. Dr. Senat provides only a checkmark "yes" as to causal relationship, which is of little probative value. The checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[5] Dr. Bleicher stated that he disagreed with Dr. Orlandi and felt that the

[2] *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

[3] *Gary R. Sieber*, 46 ECAB 215 (1994).

[4] It is appellant's burden or proof to establish a particular condition is employment related. *See James P. Bailey*, 53 ECAB 494 (2002).

[5] *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

second opinion physician had "misrepresented clinical information." He did not discuss the specific diagnosed conditions he felt were causally related to the July 14, 2010 injury and support such an opinion with medical rationale. Dr. Bleicher did not provide a factual and medical history or explain specifically how and why he disagreed with Dr. Orlandi. Appellant did not submit a rationalized medical opinion, based on an accurate factual and medical background, with respect to causal relationship between a meniscal tear or other diagnosed condition and the employment injury.

On appeal, appellant contended that there was no referral to a third physician since Dr. Bleicher disagreed with Dr. Orlandi. To create a conflict under 5 U.S.C. § 8123(a),[6] the reports in disagreement must be of virtually equal weight and rationale.[7] As noted Dr. Bleicher did not provide a rationalized opinion based on a complete background, as to the specific diagnosed conditions he felt were causally related to the employment injury. His treatment note was not of virtually equal weight and rationale with Dr. Orlandi and is not sufficient to create a conflict under 5 U.S.C. § 8123(a). Appellant also discussed a nurse assigned to her case and suspension by the employing establishment. These issues are not before the Board with respect to the December 8, 2010 termination of compensation decision. 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate compensation for the accepted right knee sprain. Appellant did not establish a meniscal tear or other injury as causally related to the July 14, 2010 employment injury.

[6] FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination. 5 U.S.C. § 8123(a).

[7] *Richard R. LeMay*, 56 ECAB 341, 346 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 8, 2010 is affirmed.

Issued: September 29, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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