United States Department of Labor
Employees' Compensation Appeals Board

D.V., Appellant	)	
	)	**Docket No. 11-1232**
and	)	**Issued: January 9, 2012**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 26, 2011 appellant, through her attorney, filed a timely appeal from an April 1, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on March 18, 2008.

FACTUAL HISTORY

On August 15, 2008 appellant, then a 51-year-old city carrier, filed a traumatic injury claim alleging that she sprained her right leg and left knee when she fell down icy stairs on March 18, 2008. She stopped work on March 24, 2008. The employing establishment

[1] 5 U.S.C. § 8101 *et seq.*

controverted the claim on the grounds that appellant waited almost five months before notifying her supervisor about an injury.

An April 9, 2008 work status form signed by Dr. Susan M. Sarran, a Board-certified family practitioner, advised that appellant be placed on modified duty. In April 10 and May 17, 2008 treatment notes, Dr. Kevin Moore, a chiropractor, related that appellant experienced right leg and lower back symptoms and recommended work restrictions.[2]

OWCP informed appellant in an August 26, 2008 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a factual statement describing the March 18, 2008 employment incident and a medical report from a physician explaining how this event caused or contributed to her condition.

Appellant detailed in a September 26, 2008 statement that she was descending steps during a delivery on March 18, 2008 when she slipped, landed on her back and bruised her right side. She later informed her supervisor of the incident after she returned to the station, but did not file a claim because she thought she would recover. Appellant resumed work on September 16, 2008, but stopped shortly afterward because she was unable to perform her normal duties. In a September 19, 2008 eyewitness statement, Florida Ester, a resident, asserted that she saw appellant fall down icy steps on or around March 19, 2008.

A July 22, 2008 magnetic resonance imaging (MRI) scan of the left knee obtained by Dr. Douglas M. Gregerson, a chiropractic radiologist, exhibited degenerative joint disease involving the medial and patellofemoral compartments, mild joint effusion and mild patellar tendinosis. A September 11, 2008 work status note from Dr. Samuel S. Park, a Board-certified orthopedic surgeon, diagnosed knee osteoarthritis and released appellant to full duty effective September 15, 2008.

By decision dated October 2, 2008, OWCP denied appellant's claim, finding the medical evidence insufficient to demonstrate that the accepted March 18, 2008 employment incident was causally related to diagnosed condition.

Appellant's counsel requested reconsideration on April 14, 2009 and submitted additional medical evidence. A January 19, 2008 treatment note from Dr. Chadwick C. Prodromos, a Board-certified orthopedic surgeon, diagnosed left knee chondromalacia while an April 7, 2008 note from Dr. Sarran diagnosed sacroiliac joint dysfunction and left iliotibial band tightness.

In May 17 and June 9, 2008 questionnaire forms, Dr. Moore assessed sacroiliac and iliotibial band injuries resulting from appellant's fall down stairs. He specifically diagnosed left knee strain, sacroiliac strain and iliotibial band syndrome in a June 13, 2008 attending physician's report.[3] In July 25 and October 24, 2008 reports, Dr. Moore related that appellant fell in February or March 2008 and sustained right sacroiliac joint and iliotibial band injuries as

[2] The case record contains various work status notes signed by Dr. Moore from April 28 to September 25, 2008.

[3] Dr. Moore restated these findings in attending physician's reports for the period July 23, 2008 to February 16, 2009.

well as left knee pain. The knee subsequently worsened when she attempted to walk on her delivery route. Dr. Moore diagnosed left patellar tendinitis, joint derangement and effusion.

In reports dated September 29, 2008, Dr. Prodromos remarked that prior physical therapy sessions aggravated appellant's left knee symptoms. On examination, he observed a left antalgic gait, patellofemoral crepitus, anterior pain and effusion. X-rays demonstrated mild spurring and diminution of the medial clear space while an MRI scan indicated patellar tendinosis. Dr. Prodromos diagnosed severe left chondromalacia patellae. Treatment records for the period October 27, 2008 to June 25, 2009 documented significant clinical improvements.

In an August 17, 2009 report, Dr. Prodromos related that appellant aggravated her left chondromalacia patellae when she lifted a heavy package at work. On examination, he observed effusion and patellofemoral crepitus. Dr. Prodromos also noted lateral patellar tilting in a December 18, 2009 report.

Dr. Prodromos commented in a February 15, 2010 report that appellant continued to experience left anterior and medial knee pain. He observed left medial joint line tenderness, effusion, patellofemoral crepitus and a positive patellar compression test on examination. Dr. Prodromos diagnosed left knee pain secondary to patellofemoral and medial compartment arthrosis. Appellant elected to undergo surgery, which was scheduled for March 25, 2010.

In an August 11, 2010 report, Dr. Prodromos specified that appellant sustained a severe full thickness articular cartilage defect of the knee.

On April 1, 2011 OWCP denied modification of the October 2, 2008 decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,[4] including that she is an "employee" within the meaning of FECA and that she filed her claim within the applicable time limitation.[5] The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time and place and in the manner alleged. Second, the employee must submit evidence, in

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[5] *R.C.*, 59 ECAB 427 (2008).

[6] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.[8]

ANALYSIS

The case record supports that appellant was descending icy steps during a delivery on March 18, 2008 when she slipped and fell down. Nonetheless, the Board finds that she did not establish her traumatic injury claim because the medical evidence did not sufficiently establish that this accepted employment incident caused or contributed to a right leg or left knee condition.

Appellant submitted numerous reports and treatment notes from Dr. Moore for the period April 10, 2008 to February 16, 2009. The chiropractor diagnosed left knee strain, patellar tendinitis, sacroiliac strain and iliotibial band syndrome, *inter alia*, and attributed these injuries to her fall in either February or March 2008. As defined under FECA, a "physician" includes a chiropractor only to the extent that his reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[9] Since Dr. Moore did not diagnose spinal subluxation based on an x-ray, he was not a "physician" and his opinion regarding the cause of appellant's left knee condition lacked evidentiary weight.[10]

In September 29, 2008 and August 17, 2009 reports, Dr. Prodromos opined that past physical therapy sessions and appellant's lifting of a heavy package on the job aggravated her left chondromalacia patellae. However, none of his reports addressed whether her condition was causally related to the accepted March 18, 2008 employment incident. Therefore,

[7] *T.H.*, 59 ECAB 388 (2008).

[8] *I.J.*, 59 ECAB 408 (2008).

[9] 5 U.S.C. § 8101(2); *Merton J. Sills*, 39 ECAB 572, 575 (1988). Subluxation means an incomplete dislocation, off-centering, misalignment, fixation, or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays. 20 C.F.R. § 10.5(bb).

[10] *See Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician). Even assuming, *arguendo*, that Dr. Moore met FECA's criteria, his opinion would be relevant only with regard to the spine itself. *See George E. Williams*, 44 ECAB 530 (1993).

Dr. Prodromo's opinion was of diminished probative value.[11] Finally, the medical records signed by Drs. Gregerson, Park and Sarran were of limited probative value because none offered an opinion on the cause of appellant's injury.[12] In the absence of rationalized medical opinion evidence explaining how the March 18, 2008 fall caused an injury, appellant failed to meet her burden.

Appellant's counsel contends on appeal that the April 1, 2011 decision was contrary to fact and law. As noted, the medical evidence remained insufficient to demonstrate that the accepted March 18, 2008 employment incident was causally related to right leg or left knee condition.

The Board notes that appellant submitted new evidence after issuance of the April 1, 2011 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.[13] However, appellant may submit new evidence or argument as part of a formal 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 appellant did not establish that she sustained a traumatic injury in the performance of duty on March 18, 2008.

[11] *John W. Montoya*, 54 ECAB 306, 309 (2003). *See also M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value).

[12] *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[13] 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: January 9, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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