United States Department of Labor
Employees' Compensation Appeals Board

E.O., Appellant	)	
and	)	**Docket No. 12-506**
	)	**Issued: July 11, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Paramus, NJ, Employer	)	

Appearances:
Leonard S. Miller, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 10, 2012 appellant, through her attorney, filed a timely appeal from a November 30, 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 this case.

ISSUE

The issue is whether appellant established an injury in the performance of duty on July 7, 2011.

FACTUAL HISTORY

On July 8, 2011 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging an injury in the performance of duty on July 7, 2011. She twisted her right

[1] 5 U.S.C. § 8101 *et seq.*

ankle and knee in a small hole in the grass. The reverse of the claim form reported appellant stopped work on July 7, 2011.

In a letter dated July 19, 2011, an employing establishment supervisor controverted the claim. An investigation shortly after the alleged incident did not reveal a small hole. The supervisor also indicated that appellant had been off work from March 31 to May 16, 2011 following a right medial meniscectomy.[2] The record contains a magnetic resonance imaging (MRI) scan report of the right knee dated October 14, 2010 from Dr. Edward Milman, a radiologist, who reported a "complete tear of the root ligament of the posterior horn of the medial meniscus with medial meniscus extruded medially."

Appellant submitted a July 7, 2011 form report from Dr. Chris Mattheou, a Board-certified orthopedic surgeon, stating that appellant had twisted her right knee and ankle. Dr. Mattheou diagnosed right knee and ankle sprain, indicating that an MRI scan would be obtained.

By decision dated August 17, 2011, OWCP denied the claim for compensation. It found that the medical evidence was insufficient to establish the claim.

On August 29, 2011 OWCP received a request for reconsideration. By decision dated September 2, 2011, it determined the reconsideration request was insufficient to warrant further merit review.

On September 21, 2011 appellant again requested reconsideration. In a narrative statement dated July 27, 2011, she stated that on July 7, 2011 she had been crossing a garden to reach a mailbox and twisted her right foot in a hole in the garden. Appellant stated that she lost her balance and fell on her right knee on which she had recently undergone surgery.

In a report dated July 28, 2011, Dr. Mattheou stated that appellant had a new injury to her right knee on July 7, 2011 when she twisted it on grass while working. He reported that a new MRI scan revealed a torn medial meniscus of the right knee and contusions of the medial and lateral femoral condyles, as well as chondromalacia patella.[3] Dr. Mattheou noted that eventually appellant would need arthroscopic surgery for the problems outlined by the MRI scan.

In a report dated September 2, 2011, Dr. Mattheou stated: "[Appellant] fell on the grass on July 7, 2011 and lacerated the medial meniscus of her right knee plus contused the medial and lateral femoral condyles of the same knee and the medial tibial plateau also sustained extensive severe chondromalacia of the patella more medially. She also had a nondisplaced osteochondral fracture of the posterolateral femoral condyle. These problems are definitely related to the injury on July 7, 2011 and require arthroscopic surgery." He noted that appellant had arthroscopic surgery of the same knee on March 30, 2011. Dr. Mattheou stated, "However, that surgery was related to the patella which was tilted laterally for which she underwent lateral retinacular

[2] The record contains a note dated March 31, 2011 from Dr. Narcisa Murillo, an internist, stating appellant was unable to work from March 31 to May 16, 2011 due to a right knee partial meniscectomy.

[3] The record contains a July 18, 2011 MRI scan report.

release. At that time, the meniscus was intact as well as the joint was not contused. The new findings are related again to the injury of July 7, 2011 and apparently had arrived while the patient was working."

In reports dated October 7 and 21, 2011, Dr. Murillo stated that appellant was treated for right knee pain.[4] He noted that it was Dr. Matarese's opinion that appellant had a retear of the medial meniscus of July 7, 2011 from a work-related injury and needed a repeat arthroscopic surgery. Dr. Matarese believed that appellant's right knee symptoms were directly related to the July 7, 2011 injury.

By decision dated November 30, 2011, OWCP reviewed the case on its merits and denied modification. It found the medical evidence insufficient to establish causal relation.

LEGAL PRECEDENT

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[5] The phrase "sustained while in the performance of duty" in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of an in the course of employment."[6] An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.[7] In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[8]

OWCP procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.[9] In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.[10]

[4] The October 7, 2011 report states that it was electronically signed by Dr. William Matarese, a Board-certified orthopedic surgeon.

[5] 5 U.S.C. § 8102(a).

[6] *Valerie C. Boward*, 50 ECAB 126 (1998).

[7] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

[8] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

[10] *Id.*

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[11]

ANALYSIS

In the present case, OWCP has accepted an employment incident as alleged on July 7, 2011. Appellant stated that she stepped in a small hole, twisted her right leg and fell to her right knee. The issue is whether the medical evidence is sufficient to establish an injury causally related to the employment incident.

OWCP denied the claim on the grounds the evidence did not contain a rationalized medical opinion on causal relationship. The medical evidence consists primarily of reports from Dr. Mattheou, who briefly stated in a September 2, 2011 report that appellant fell on grass, without discussing the mechanism of injury in any detail. He did not provide a complete factual and medical history. Dr. Mattheou briefly referred to prior knee surgery as involving the patella, with an intact meniscus. But he did not discuss the October 14, 2010 MRI scan, which showed a complete tear of the medial meniscus or otherwise provide a complete or accurate medical history.

Dr. Mattheou also provided various diagnoses, including a meniscal tear, contusions of the lateral femoral condyles, chondromalacia patella and an osteochondral fracture and then stated that "these problems" are directly related to a July 7, 2011 incident. He did not provide additional explanation. A rationalized medical opinion would have to discuss the mechanism of injury with respect to a specific diagnosed condition and explain the causal relationship between the diagnosed condition and the employment incident.

The medical reports dated October 7 and 21, 2011 are of diminished probative value to the issue presented. Dr. Murillo did not offer an opinion but noted that Dr. Matarese noted there was a retear of the meniscus. The reports provide no accurate history of injury, medical background or medical rationale in support of the medical opinion.

The Board finds that the evidence does not include a rationalized medical opinion, based on a complete and accurate factual and medical history. The evidence of record does not contain a rationalized medical opinion on causal relationship between a specific diagnosed condition and the July 7, 2011 employment incident.

On appeal, appellant states there was medical documentation to support her claim that she resubmitted. The Board has reviewed the medical evidence of record and finds that appellant did not meet her burden of proof. Appellant may submit new evidence or argument with a written

[11] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

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 meet her burden of proof to establish an injury in the performance of duty on July 7, 2011.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 30, 2011 is affirmed.

Issued: July 11, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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