United States Department of Labor
Employees' Compensation Appeals Board

L.A., Appellant	)	
and	)	**Docket No. 11-1740**
	)	**Issued: March 12, 2012**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Memphis, TN, 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
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 27, 2011 appellant, through her attorney, filed a timely appeal from a March 31, 2011 decision of the Office of Workers' Compensation Programs (OWCP) that denied her claim. 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 met her burden of proof to establish that she sustained an injury caused by an August 2, 2010 employment incident.

On appeal, appellant's attorney asserts that the March 31, 2011 decision was contrary to fact and law.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On August 5, 2010 appellant, then a 35-year-old tax examiner, filed a traumatic injury claim, alleging that on August 2, 2010 she fractured her right knee cap when she bumped the desk tray that holds her keyboard while attempting to adjust her chair. She stopped work on August 4, 2010. By letter dated August 13, 2010, OWCP informed appellant of the evidence needed to accept her claim. Appellant was given 30 days to respond. On September 20, 2010 OWCP denied the claim on the grounds that the evidence was insufficient to establish that the incident occurred as described and because appellant submitted no medical evidence describing the claimed injury.

On October 8, 2010 appellant requested a hearing. In statements dated October 8, 2010 and January 28, 2011, she described the claimed injury. Appellant stated that, while positioning her chair, she hit her knee on the keyboard tray of her desk. She stated that she initially thought it was merely a bruise but was limping the next day when she went to work. Appellant first saw her family doctor on August 4, 2010, and he referred her to Dr. Michael J. Heck, a Board-certified orthopedic surgeon. She stated that she returned to work on August 27, 2010, and worked until she had surgery on October 5, 2010, and then returned on November 1, 2010.

In a disability slip dated August 4, 2010, Dr. Cary M. Finn, a Board-certified internist, advised that appellant could return to work on August 9, 2010. In an August 4, 2010 treatment note, he described the injury, stating that when she attempted to raise her chair, the top of her right knee hit the undersurface of the desk. Dr. Finn provided examination findings and recommended a magnetic resonance imaging (MRI) scan study. An August 10, 2010 MRI scan of the right knee demonstrated a tiny tear of the posterior horn of the lateral meniscus and mild chondromalacia of the medial trochlea with trace knee joint effusion. On August 12, 2010 Dr. Heck noted the MRI scan results and recommended physical therapy. He stated that if appellant had not improved in three weeks, operative intervention would be considered. Dr. Heck provided an August 12, 2010 disability slip noting restrictions of no squatting, bending or prolonged standing for three weeks. In a disability slip dated August 20, 2010, he advised that appellant could return to restricted duty on August 13, 2010. Dr. Heck indicated that she was non weight-bearing from August 4 to 12, 2010. On August 26, 2010 Vanessa Sluder, a nurse practitioner in Dr. Finn's office, provided the health care provider portion for an application for leave under the Family and Medical Leave Act in which she advised that appellant was being treated for a knee ligament tear and needed to take leave for physical therapy and evaluation for surgery.[2] In an August 23, 2010 report, Dr. Finn advised that appellant was undergoing treatment for a torn cartilage in her right knee due to an employment injury. He advised that she could return to work on August 30, 2010, pending improvement.

In a September 8, 2010 report, Dr. David A. Deneka, a Board-certified orthopedic surgeon and an associate of Dr. Heck, noted the history of injury, stating that appellant injured her knee when it hit an iron piece on her desk. He reported appellant's complaints of anterior and lateral-sided pain since and discussed the MRI scan findings. Dr. Deneka noted tenderness over the posterior horn of the lateral meniscus on examination of the right knee. He diagnosed

[2] Appellant also submitted physical therapy reports.

lateral meniscus tear and chondromalacia trochlear of the right knee and recommended arthroscopic surgery. In an October 4, 2010 disability slip, Dr. Deneka stated that appellant was having knee surgery on October 5, 2010 and would be out of work for up to six weeks postoperatively. In a February 9, 2011 letter, he reported that her injury occurred at work on August 2, 2010. Dr. Deneka stated:

> "[Appellant] was sitting in [a] chair underneath the desk. She attempted to raise the chair and the top of the desk hit her right knee. [Appellant] initially underwent a course of conservative treatment without any improvement in her symptoms. On October 5, 2010 she underwent an arthroscopy of her right knee. At that time, [appellant] was found to have a tear of her lateral meniscus as well as a chondral injury to the medial femoral condyle.
>
> "It is certainly reasonable to think that this type of direct injury combined with the twist[ing] associated with pushing up her chair could have caused this injury."

At the hearing, held telephonically on February 8, 2011, appellant described the injury, testifying that she hurt her knee while she was positioning her chair, stating that she struck it on the ledge that supported her keyboard. She stated that she came to work the next day but was limping and saw her family doctor who referred her to the orthopedist. Appellant's supervisor, Eloise Smith, testified that she saw appellant limping after the incident but not before.

By decision dated March 31, 2011, OWCP's hearing representative found that the August 2, 2010 incident occurred but the medical evidence did not establish that appellant sustained an injury caused by this incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA, that an injury was sustained 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[3]

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[4] To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical

[3] *Gary J. Watling*, 52 ECAB 278 (2001).

[4] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[5]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[6] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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 of the claimant, 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.[7] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[8]

ANALYSIS

The Board finds that this case is not in posture for decision. As found by OWCP's hearing representative, the evidence supports that the August 2, 2010 employment incident occurred as alleged. The history of injury provided by appellant, and the histories provided by both Dr. Heck and Dr. Deneka, are in agreement that she hit her knee on the ledge of her desk that supports her keyboard while she was attempting to reposition her chair. The Board also finds that medical evidence of record generally supports that this incident caused a medical condition.

The medical evidence includes physical therapy notes and an August 26, 2010 leave application from Ms. Sluder, a nurse practitioner. Lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA.[9] Thus, the physical therapy notes and Ms. Sluder's report are of no probative value. In treatment notes dated August 4 to 12, 2010, Dr. Heck described the employment incident, reviewed August 10, 2010 MRI scan findings that demonstrated a lateral meniscus tear and mild chondromalacia of the right knee. He, however, did not provide an opinion regarding the cause of the diagnosed condition. Medical evidence that does not offer any opinion regarding the

[5] *Supra* note 3.

[6] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[7] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[8] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[9] *David P. Sawchuk*, 57 ECAB 316 (2006).

cause of an employee's condition is of limited probative value on the issue of causal relationship.[10]

The record, however, also contains reports from Dr. Deneka, an associate of Dr. Heck who performed the October 5, 2010 arthroscopic procedure.[11] In a February 9, 2011 letter, Dr. Deneka related that at surgery appellant was found to have a lateral meniscus tear and a chondral injury of the right knee. He again described the incident and concluded, "It is certainly reasonable to think that this type of direct injury combined with the twist[ing] associated with pushing up her chair could have caused this injury."

The Board finds that, while Dr. Deneka's report lacks detailed medical rationale sufficient to discharge appellant's burden of proof that she sustained an injury or medical condition on August 2, 2010, this does not mean that it may be completely disregarded by OWCP. It merely means that its probative value is diminished.[12]

It is well established that proceedings under FECA are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[13] The case shall therefore be remanded to OWCP. On remand, OWCP shall refer appellant, a statement of accepted facts, and the medical evidence of record to an appropriate Board-certified specialist for an examination, diagnosis and a rationalized opinion as to whether appellant sustained an injury on August 2, 2010 caused by the accepted incident and, if so, if she had any concurrent disability for work on or after that date. After this and such further development deemed necessary, OWCP shall issue an appropriate decision.

CONCLUSION

The Board finds that this case is not in posture for decision regarding whether appellant sustained an injury on August 2, 2010.

[10] *Willie M. Miller*, 53 ECAB 697 (2002).

[11] The Board notes that a copy of the operative report is not found in the case record.

[12] *Shirley A. Temple*, 48 ECAB 404 (1997).

[13] *See Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2011 decision of the Office of Workers' Compensation Programs be set aside and the case remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: March 12, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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