United States Department of Labor
Employees' Compensation Appeals Board

E.H., Appellant	)	
and	)	
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Philadelphia, PA, Employer	)	**Docket No. 12-935** **Issued: November 21, 2012**

Appearances:
Jason S. Lomax, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On March 20, 2012 appellant, through her representative, filed a timely appeal from the October 6, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her traumatic injury 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 sustained a right knee injury in the performance of duty on June 30, 2011.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 12, 2011 appellant, a 48-year-old lead transportation security officer (screener), filed a traumatic injury claim alleging that she injured her right knee in the performance of duty on June 30, 2011: "Right knee popped out of place while I was turning to look at the image on the x-ray."

A witness stated that he was assigned to the x-ray machine and was screening luggage when he saw appellant stumble "in my peripheral vision." He saw that she looked to be in pain. When he asked appellant what was wrong, she replied that her leg had given out. He offered to let her sit in his chair.

The record shows that appellant promptly notified her supervisor of the injury. The supervisor advised that appellant declined medical attention at that time.

Appellant saw Dr. Paul F. Maranzini, an osteopath, on July 13, 2011. She provided the following history of injury: "TSO … called for a bag search. I turned to look at the image on the x-ray and my right knee popped out of place." Dr. Maranzini examined appellant and diagnosed sprain/strain of the medial collateral ligament and knee pain. Appellant was to start physical therapy and wear a right knee sleeve while performing her duties.

On that same date a physical therapist reported the same history of injury. He described the mechanism of injury as follows: "[Appellant] reports that she hurt her right knee on June 30, [2011] when she twisted while standing and her right knee went in and out of place."

A magnetic resonance imaging (MRI) scan showed a complete tear of the right anterior cruciate ligament (ACL).

Appellant reported that she slipped on a mat on August 9, 2011 and her right knee popped out again.[2]

Dr. Peter C. Vitanzo, Jr., Board-certified in family and sports medicine, related the history of injury: "Apparently, on that date [appellant] twisted her knee and immediately developed pain and swelling." He described her medical treatment and noted that she had a prior right knee arthroscopy 20 years ago.[3] Dr. Vitanzo examined appellant and reviewed the MRI scan. He diagnosed right knee injury and expressed this opinion: "It does appear that she did indeed injure her ACL when she initially injured her knee on June 30, 2011."

Dr. Paul A. Marchetto, a consulting Board-certified orthopedic surgeon, related that on June 30, 2011 appellant was turning toward an x-ray machine when her right knee buckled and she felt a pop in her knee. Appellant had another episode of knee instability on August 9, 2011 when she stepped on a stress mat that moved and her knee buckled again. "In my opinion within a reasonable degree of medical certainty, this was a reinjury of the initial June 30, [2011] anterior

[2] OWCP File No. xxxxxx457.

[3] According to a September 8, 2011 medical report, appellant slipped on a wet floor 20 years earlier and injured her right knee. She required arthroscopic surgery "and she resolved with no issue."

cruciate ligament tear. [Appellant] had another episode of instability with twisting. The knee buckled and this goes along with the original injury of June 30, 2011." Dr. Marchetto noted that the MRI scan confirmed the ACL tear.

On October 6, 2011 OWCP denied appellant's traumatic injury claim. It found that the June 30, 2011 incident did not occur as alleged: on her July 12, 2011 claim form, she described turning, but on July 13, 2011 the medical evidence indicated that she had twisted her knee. "This is different [than] what you reported." OWCP further found that appellant had submitted no medical evidence to establish that a diagnosed medical condition was causally related to the incident at work.

On appeal, appellant's representative argued that OWCP erroneously attempted to distinguish turning from twisting. He notes that the same medical report that mentioned twisting also described the same history of injury that appellant provided on her claim form. The representative argued that the evidence raised, at the very least, an uncontroverted inference of causal relationship sufficient to require further development.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[4] An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his/her claim. When an employee claims that he/she sustained an injury in the performance of duty, he/she must submit sufficient evidence to establish that he/she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He/She must also establish that such event, incident or exposure caused an injury.[5]

Causal relationship is a medical issue[6] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[7] must be one of reasonable medical certainty[8] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[9]

[4] 5 U.S.C. § 8102(a).

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

[6] *Mary J. Briggs*, 37 ECAB 578 (1986).

[7] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[8] *Morris Scanlon*, 11 ECAB 384, 385 (1960).

[9] *William E. Enright*, 31 ECAB 426, 430 (1980).

ANALYSIS

The Board notes that the record shows appellant provided a consistent history of injury. On her July 12, 2011 claim form, appellant stated that her right knee popped out of place when she turned to look at an x-ray image. On the following day she saw Dr. Maranzini, the osteopath, and gave the same history: "I turned to look at the image on the x-ray and my right knee popped out of place."

This was the same history of injury that the physical therapist reported. The physical therapist then described the mechanism of injury as "twisting while standing." The Board finds no inconsistency. The mechanism of injury does not contradict the history of injury appellant reported on her claim form or the history of injury she reported to Dr. Maranzini.

Further, appellant's account of what happened is consistent with both the witness statement and the supervisor's account of what appellant told her on June 30, 2011. The Board finds that she has established that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The question for determination is whether the June 30, 2011 incident at work caused a right knee injury.

The medical evidence generally supports appellant's claim that she injured her right knee on June 30, 2011. Dr. Maranzini expressed no opinion on causal relationship, but he related the history of injury, examined her and diagnosed a sprain/strain of the medial collateral ligament. He found that appellant should wear a sleeve on her right knee while performing her duties.

Dr. Vitanzo, the specialist in family and sports medicine, stated that appellant injured her ACL on June 30, 2011. He based his opinion on a proper history of injury and medical treatment, on his physical examination of her and on the MRI scan confirming a torn ACL. Dr. Vitanzo's lacks a discussion of whether the mechanism of injury was biomechanically sufficient to rupture the ACL and what evidence or clinical findings supported that the rupture occurred on June 30, 2011 and was not preexisting, given that appellant required arthroscopic surgery on that knee 20 years earlier.

Dr. Marchetto, the orthopedic surgeon, opined that when appellant slipped on a stress mat on August 9, 2011 she reinjured the June 30, 2011 ACL tear.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.[10]

Although the medical opinion evidence is insufficiently to discharge appellant's burden to establish that the June 30, 2011 incident at work caused a right knee injury, it raises an unrebutted inference of causal relationship sufficient to require further development by OWCP.[11]

[10] *A.A.*, 59 ECAB 726 (2008); *Phillip L. Barnes*, 55 ECAB 426 (2004).

[11] *Id.*; *supra* note 5 at 345, 358 (1989) (finding that the medical evidence was not sufficient to discharge the claimant's burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship).

Accordingly, the Board will set aside OWCP's October 6, 2011 decision and remand the case for further development of the medical evidence. Following such further development as may become necessary, OWCP shall issue a *de novo* decision on appellant's claim for workers' compensation benefits.

CONCLUSION

The Board finds that this case is not in posture for decision. Further development of the medical opinion evidence is warranted.

ORDER

IT IS HEREBY ORDERED THAT the October 6, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action.

Issued: November 21, 2012
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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