

**United States Department of Labor
Employees' Compensation Appeals Board**

P.T., Appellant

and

**U.S. POSTAL SERVICE, DeMOSS STATION,
Houston, TX, Employer**

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**Docket No. 13-1862
Issued: December 2, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 6, 2013 appellant filed a timely appeal of the May 10, 2013 decision of the Office of Workers' Compensation Programs (OWCP) denying his claim. Pursuant to the Federal Employees' Compensation Act¹ (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 an injury in the performance of duty on April 18, 2012, as alleged.

On appeal appellant contends that she hurt her right knee when she tripped over a car block and her knee struck the cement.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 18, 2012 appellant, then a 56-year-old city carrier, filed a traumatic injury claim alleging that on that date she sustained a right knee strain when she tripped over a parking lot block. The employing establishment controverted the claim.

Appellant submitted an April 18, 2012 report from Dr. Horacio Enrique Oria, a general surgeon, who noted that she presented for an initial visit with pain in the right lower leg due to a fall. Dr. Oria diagnosed unspecified internal derangement of the right knee; contusion of the right lower leg; and contusion of the left knee. Appellant also submitted a Texas Workers' Compensation Work Status report and a duty status report, both dated April 18, 2012, from Dr. Oria, who listed appellant's work restrictions and noted that she could perform desk duty only. When asked to describe how the injury occurred, Dr. Oria noted that the employee tripped over a parking lot block and fell to her knees.

By letter dated May 1, 2012, OWCP informed appellant of the additional evidence needed to establish her claim.

Appellant submitted medical reports, duty status reports and Texas Workers' Compensation Work Status reports from Dr. Oria dated April 26 through June 1, 2012. Dr. Oria reiterated the diagnoses of right unspecified internal derangement of knee, right contusion of lower leg and left contusion of knee. He prescribed physical therapy and medication. Dr. Oria noted that appellant fell, hurting both knees and her right leg. Appellant also submitted reports from her physical therapist.

By decision dated June 5, 2012, OWCP denied appellant's claim. It found that she failed to establish that she tripped over a parking block and fell to her knees on April 18, 2012, as alleged.

On November 15, 2012 appellant requested reconsideration. She submitted a statement regarding her claim, supporting photographs and additional physical therapy notes.

By decision dated January 3, 2013, OWCP modified the June 5, 2012 decision to accept that appellant established the April 18, 2012 incident in which she fell. It denied her claim finding insufficient medical evidence or causal relationship.

On March 9, 2013 appellant requested reconsideration. She submitted a May 21, 2012 progress report from Dr. Eric Berkman, a Board-certified orthopedic surgeon, who noted a right knee injury that occurred on April 18, 2012 when appellant tripped over a car block. Dr. Berkman diagnosed knee pain.

By decision dated May 10, 2013, OWCP denied modification of its January 3, 2013 decision. Although appellant fell on April 28, 2012 as alleged, the claim remained denied because she failed to establish the causal relationship between the accepted employment incident and diagnosed medical conditions.

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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

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 or exposure, which is alleged to have occurred.³ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁴

The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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.⁵

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained an injury in the performance of duty on April 18, 2012 as the medical evidence submitted is insufficient to support her claim for compensation.

OWCP accepted that appellant established that she fell on April 18, 2012. She was diagnosed with right internal derangement of the knee, right contusion of the lower leg and right contusion of the knee. OWCP denied appellant's claim finding that she did not submit a sufficient rationalized medical opinion that established a causal relationship between her diagnosed conditions and the accepted incident. The medical evidence provides insufficient

² *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁴ See *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

explanation as to how the employment incident of April 18, 2012 caused appellant's diagnosed medical conditions. Dr. Oria merely noted the history that appellant tripped over a block and fell to her knees. He did not describe specific details of the fall or indicate that it occurred during her federal employment. Dr. Oria also did not explain how this fall resulted in the diagnosed right internal derangement of the knee, right contusion of the lower leg and right contusion of the knee.

Dr. Berkman also did not relate the April 18, 2012 fall to appellant's employment. He did not provide a rationalized medical opinion explaining how the fall contributed to the medical diagnosis. The notes of appellant's physical therapists are not considered medical evidence as these providers are not physicians under FECA.⁶ Accordingly, as appellant failed to submit medical evidence that established a causal relationship between her federal employment and a diagnosed medical condition, appellant did not meet her burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to establish causal relationship.⁷

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 appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on April 18, 2012, as alleged.

⁶ See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

⁷ *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 10, 2013 is affirmed.

Issued: December 2, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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