

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

L.K., Appellant)	
)	
and)	Docket No. 12-1427
)	Issued: January 8, 2013
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Omaha, NE, Employer)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On June, 18, 2012 appellant filed a timely appeal of the December 21, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her 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.²

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained a traumatic injury in the performance of duty.

¹ 5 U.S.C. §§ 8101-8193.

² Following issuance of the December 21, 2011 decision, appellant submitted new evidence to OWCP. The Board may not consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On August 3, 2011 appellant, then a 41-year-old transportation security officer, filed a traumatic injury claim alleging that, on July 30, 2011, while grabbing a bag, she felt her left knee pop. She did not stop work.

In an August 8, 2011 work status report, Dr. Charles F. Burt, a Board-certified orthopedist, diagnosed left knee pain and advised that appellant could return to work with restrictions. In work status reports dated August 18 and 19, 2011, he diagnosed medial tibial plateau contusion of the left knee and advised that she could return to a desk job with restrictions. On September 28, 2011 Dr. Burt reported appellant's complaints of lateral and posterior left knee pain. He noted minimal effusion and tenderness along the posterolateral joint line of the left knee. Dr. Burt diagnosed persistent left knee pain with symptomatic lateral meniscus tear and painful cyclops lesion and recommended a left knee arthroscopy cyclops lesion excision. Appellant submitted August 8, 2011 report from a physician's assistant who treated her for bilateral knee pain. She reported lifting a luggage bag from one carrier to the next and twisted and felt a pop in her left knee. Appellant noted that her history was significant for a bilateral knee anterior cruciate ligament reconstruction in 2005 and 2006. The physician's assistant advised x-rays of both knees revealed mild degenerative changes bilaterally with no other acute abnormalities. In a September 16, 2011 report, the physician's assistant noted that appellant had no improvement in her knee symptoms. An August 16, 2011 magnetic resonance imaging (MRI) scan of the left knee revealed an anterior cruciate ligament reconstruction with hamstring autograft, focal fibrosis cyclops lesion, lateral meniscus, shallow radial tear posterior horn and full thickness chondral fissuring with foci in situ delamination of the lateral facet of the patella.

The employing establishment submitted a September 28, 2011 physician review report from Dr. David M. Sack, a Board-certified physiatrist who was asked to review appellant's file but did not examine her. Dr. Sack noted Dr. Burt's finding of a cyclops lesion and opined that a cyclops lesion can develop over time after an anterior ligament reconstruction and not after an acute injury event. He opined that there was no clear acute condition that could be explained by the July 30, 2011 event. Dr. Burt advised that there were no injury symptoms reported at the time of the injury with regard to the right knee and the left knee appeared to be related to a long term complication of the prior anterior cruciate ligament reconstruction.

By letter dated October 17, 2011, OWCP advised appellant that her claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. It indicated that her claim was administratively handled to allow medical payments up to \$1,500.00; however, the merits of the claim had not been formally adjudicated. OWCP advised that, because appellant's physician recommended surgery, her claim would be formally adjudicated. It requested that she submit additional information including a comprehensive medical report from her treating physician, which included a reasoned explanation as to how the specific work factors or incidents identified by her had contributed to her claimed left knee injury.

Appellant submitted an August 18, 2011 report from a registered nurse who noted MRI scan findings. An August 22, 2011 report from a physician's assistant noted that she presented for a right knee cortisone injection. In an October 31, 2011 report, the physician's assistant noted that appellant was one week status post arthroscopic surgery with cyclops excision and

chondroplasty. A work status note dated October 31, 2011 from Dr. Burt diagnosed status post left knee surgery and advised that she could not work. Appellant also submitted a physical therapy report.

On December 21, 2011 OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish that a medical condition was related to the established work-related events.

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 filed within the applicable time limitation 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 employing establishment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.³

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.⁴ The second component of fact of injury is whether the employing establishment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁵

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.⁶ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

³ *Gary J. Watling*, 52 ECAB 357 (2001).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Id.*

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

ANALYSIS

In the instant case, it is not disputed that appellant worked as a transportation security officer and that, on July 30, 2011, she was lifting luggage at work. It is also not disputed that she was diagnosed with medial tibial plateau contusion of the left knee and a cyclops lesion. Appellant has failed to submit sufficient medical evidence to establish that her medical conditions were causally related to the July 30, 2011 work incident. On October 17, 2011 OWCP advised her of the type of medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from a physician sufficiently explaining how the July 30, 2011 lifting and twisting incident caused or aggravated a diagnosed medical condition.

Appellant submitted several reports from Dr. Burt. In an August 8, 2011 work status report, Dr. Burt diagnosed left knee pain and advised she could return to work with restrictions. In work status reports dated August 18 and 19, 2011, he diagnosed medial tibial plateau contusion of the left knee. Similarly, in a September 28, 2011 report, Dr. Burt diagnosed persistent left knee pain with symptomatic lateral meniscus tear and painful cyclops lesion and recommended left knee arthroscopy cyclops lesion excision. Likewise, in a work status note dated October 31, 2011, he noted that appellant was status post left knee surgery and could not work. However, Dr. Burt's reports are insufficient to establish the claim as he did not provide a history of injury or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.⁸ The need for a physician to support causal relationship and to explain the basis for such opinion is particularly important where the record indicates a prior bilateral knee condition that required reconstructive surgery.

Other evidence submitted by appellant included reports from a physician's assistant, a physical therapy report and a report from a nurse. The Board has held that treatment notes signed by a physician's assistant, physical therapist or nurse are not considered medical evidence as these providers are not a physician under FECA.⁹ As noted, medical documents not signed by a physician are not probative medical evidence and do not establish appellant's claim.¹⁰

Other medical reports submitted by appellant, such as reports of diagnostic testing including the MRI scan of the left knee dated August 16, 2011 are insufficient to establish the claim as these reports did not provide an opinion on the causal relationship between her job and her diagnosed medial tibial plateau contusion of the left knee and a cyclops lesion.

The employing establishment referred appellant's medical record to Dr. Sack, for a physician review report. In a September 28, 2011 report, Dr. Sack opined that her cyclops lesion was a condition that developed over time after an anterior ligament reconstruction and not after

⁸ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁹ *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).

¹⁰ *Id.* *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

an acute injury event. He advised that there was no clear acute condition that could be explained by the event of July 30, 2011.

For these reasons, OWCP properly found that appellant did not meet her burden of proof in establishing her claim.

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 did not meet her burden of proof to establish that her claimed conditions were causally related to her employment.

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board