

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

P.M., Appellant)	
)	
and)	Docket No. 13-279
)	Issued: March 21, 2013
U.S. POSTAL SERVICE, POST OFFICE,)	
San Antonio, TX, Employer)	
)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 20, 2012 appellant, through her attorney, filed a timely appeal of an October 30, 2012 Office of Workers' Compensation Programs' (OWCP) merit decision denying her occupational disease claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she developed a right knee condition due to her federal employment.

FACTUAL HISTORY

On February 26, 2011 appellant, then a 45-year-old city carrier, filed an occupational disease claim alleging that she developed pain when her knee popped on February 19, 2011. She submitted a magnetic resonance imaging (MRI) scan of the right knee dated November 16, 2010

¹ 5 U.S.C. § 8101 *et seq.*

which demonstrated advanced patellofemoral chondrosis, evidence of prior right knee arthroscopy with degeneration of the posterior horn of the medial meniscus, but no meniscal tear and moderate right knee effusion with partially ruptured Baker's cyst. Appellant sought treatment on February 15, 2011 for bilateral knee pain. Her attending physician, Dr. David Mansfield, a Board-certified orthopedic surgeon, diagnosed left knee meniscal tear. He opined that appellant was unable to walk more than two hours and could not perform her regular duties.

Appellant submitted a narrative statement dated February 22, 2011 and reported that she experienced pain in both legs and a pop behind her left knee which prevented her from driving or walking. She attributed her right leg pain to taking the weight due to her left knee injury.

In a letter dated March 11, 2011, OWCP requested additional factual and medical information in support of appellant's claim. Appellant underwent a left knee arthroscopic partial medial meniscectomy on March 23, 2011.

By decision dated May 12, 2011, OWCP denied appellant's claim finding that she had not submitted medical evidence establishing a causal relationship between her diagnosed condition and her employment.

In a report dated May 3, 2011, Dr. Mansfield noted that appellant injured her right knee on February 19, 2011 while walking down a driveway. Appellant felt a pop in her right knee and experienced pain and swelling. She underwent an MRI scan of her right knee on April 25, 2011 which demonstrated a meniscal root tear of the posterior medial menisci.

Appellant requested an oral hearing on June 7, 2011 before an OWCP hearing representative. Dr. Mansfield completed a note dated June 6, 2011 and noted that appellant was experiencing difficulties with her right knee. He stated that appellant's knee was fine and that she underwent an MRI scan which demonstrated a normal meniscus. Dr. Mansfield noted that appellant was walking at work and felt something pop in her knee on February 19, 2011. A subsequent MRI scan demonstrated a meniscal tear. Dr. Mansfield stated:

“Obviously something has changed between the two MRI [scans]. The only thing being is that [appellant] injured her knee while she was at work and she had the left knee injury as well. Whether or not she was over compensating for the left knee and putting more stress on the right knee, I think is inconsequential. While [appellant] was at work performing her normal job duties she felt something happen in her knee. She injured her right knee while she was at work.”

Dr. Mansfield diagnosed tear in the medial meniscus of the right knee.

Appellant testified at the oral hearing on October 13, 2011. She noted that she had two injuries to the right knee. In November 2010 appellant experienced pain behind the right knee which was attributed to cysts that burst as demonstrated on MRI scan. On February 19, 2011 appellant again experienced right knee pain which was diagnosed as the torn meniscus. The MRI scan she underwent on April 25, 2011 demonstrated torn right medial meniscus. Appellant attributed her right knee conditions to walking on her injured left knee for which she eventually underwent surgical repair of a meniscal tear. She stated that she had filed a separate claim for her left knee with a date of injury of December 2010. Appellant noted that she believes she sustained the right meniscal tear when she was walking quickly down a declining driveway. She

stated that she worked without restrictions until her left knee surgery, as the employing establishment did not offer light-duty work.

By decision dated January 3, 2012, OWCP's hearing representative found that appellant had not submitted the necessary medical evidence to establish a relationship between her right knee condition and her federal employment.

In a report dated June 13, 2012, Dr. Richard S. Westbrook, a Board-certified orthopedic surgeon, noted that appellant had a left knee injury and was experiencing increasing pain in her right knee after an injury on February 19, 2011 when she was walking down a driveway, twisted her knee and felt a pop. Appellant developed increased pain and swelling. Dr. Westbrook described her left knee injury on December 31, 2010 as a fall while carrying mail. He noted that appellant's November 16, 2010 MRI scan did not demonstrate a tear of the meniscus of her right knee while her April 25, 2011 MRI scan demonstrated a tear of the medial meniscus of her right knee. Dr. Westbrook stated, "I believe that the patient's right knee problem was not related to the injury in 2010 but to a new injury on February 19, 2011 reported on February 26, 2011. I believe she has a medial meniscal tear and the medial meniscal tear is directly related to the injury she sustained while working when she was walking down the driveway, twisted the knee and felt a pop in the knee and had pain at that time."

On June 27, 2012 Dr. Westbrook opined that appellant sustained a new injury on February 19, 2011 when she twisted her knee walking down a driveway resulting in a torn meniscus. He recommended surgical intervention.

Counsel requested reconsideration on July 17, 2012. By decision dated October 30, 2012, OWCP denied modification if its prior decisions. It found that Dr. Westbrook's opinion was not based on a proper factual background.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and 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 or specific condition for which compensation is claimed is causally related to the employment injury.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the

² 5 U.S.C. §§ 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁴

ANALYSIS

Appellant filed an occupational disease claim alleging that she developed a right knee condition due to factors of her federal employment. She noted that she sustained a left knee injury in December 2010 and continued to perform full duty including walking as a city carrier until her left knee surgery on March 23, 2011. In her narrative statement, appellant attributed her right leg condition to taking the weight while walking due to her left knee traumatic injury. She stated at the oral hearing that she felt a pop behind her right knee while walking down a sloping driveway on February 19, 2011. Appellant underwent a right knee MRI scan in November 2010 which demonstrated a partially ruptured Baker's cyst and evidence of prior right knee arthroscopy with degeneration of the posterior horn of the median meniscus, but no meniscal tear. She underwent a second MRI scan of the right knee on April 25, 2011 which demonstrated meniscal root tear of the posterior medial menisci.

Dr. Mansfield completed reports dated May 3 and June 6, 2011 addressing appellant's right knee condition. He consistently stated that appellant injured her right knee on February 19, 2011 while walking down a driveway. Appellant felt a pop in her right knee and experienced pain and swelling. The April 25, 2011 MRI scan demonstrated a meniscal root tear of the posterior medial menisci. Dr. Mansfield noted in his June 6, 2011 report that appellant's initial right knee MRI scan did not demonstrate a meniscal tear, but a subsequent MRI scan demonstrated a meniscal tear. He concluded that while she was at work performing her normal job duties she injured her right knee. Dr. Mansfield diagnosed tear in the medial meniscus of the right knee.

Dr. Mansfield provided a consistent history of injury and opined that appellant's right meniscal tear was due to her federal job duties. However, he failed to provide the necessary rationalized medical opinion evidence establishing how and why walking down a driveway would result in a medial meniscal tear. Dr. Mansfield also failed to address the findings on the initial MRI scan that appellant's medial menisci was degenerating.

Dr. Westbrook also completed two reports, June 13 and 27, 2012. He described appellant's injury on February 19, 2011 as walking down a driveway, twisting her knee and feeling a pop. Dr. Westbrook stated that appellant's November 16, 2010 MRI scan did not demonstrate a tear of the meniscus of her right knee while her April 25, 2011 MRI scan demonstrated a tear of the medial meniscus of her right knee. He stated, "I believe she has a medial meniscal tear and the medial meniscal tear is directly related to the injury she sustained while working when she was walking down the driveway, twisted the knee and felt a pop in the knee and had pain at that time."

⁴ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

The Board finds that Dr. Westbrook's reports are not based on a proper factual background. Appellant did not describe a twisting of her right knee in her narrative statement or before the hearing representative. She stated that she was walking down a declining driveway and felt a pop in her right knee. Due to this factual discrepancy, Dr. Westbrook's reports are not sufficient to meet appellant's burden of proof.

The Board finds that appellant has not submitted the necessary rationalized medical opinion evidence to establish a causal relationship between her February 2010 employment injury and her medial meniscal tear demonstrated by MRI scan.

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

Appellant has not submitted the necessary medical opinion evidence to establish that she sustained a right knee injury due to her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 21, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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