United States Department of Labor
Employees' Compensation Appeals Board

A.F., Appellant	)	
and	)	**Docket No. 13-1623**
	)	**Issued: April 3, 2014**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Dallas, TX, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 28, 2013 appellant filed a timely appeal from the March 12 and June 12, 2013 merit decisions of the Office of Workers' Compensation Programs (OWCP). 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.

ISSUES

The issues are: (1) whether appellant sustained a left knee condition as a consequence of her August 2, 2008 employment-related injuries; and (2) whether she sustained a recurrence of disability on September 28, 2012 causally related to the accepted employment injuries.

On appeal, appellant contends that she sustained left knee and foot injuries as a consequence of her accepted employment-related right knee injuries.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on August 2, 2008 appellant, then a 42-year-old transportation security officer, sustained osteoarthritis of the lower right leg and lateral and medial meniscus tears and chondromalacia patella of the right knee when she moved a bag from an examination table to a conveyor belt.[2] It authorized arthroscopic partial medial and lateral meniscectomies, chondroplasty of the patella, femur and tibia and major synovectomy in multiple compartments of the right knee, which were performed on May 18, 2009 and total right knee replacement which was performed on March 30, 2011. On April 26, 2011 appellant underwent surgery to treat osteoarthritis of the right knee.

On September 17, 2012 appellant returned to limited-duty work as a transportation security officer.

On October 11, 2012 appellant filed a claim alleging that she sustained a recurrence of disability on September 28, 2012. She did not stop work. Appellant stated that, following her accepted August 2, 2008 employment injuries, she was assigned limited duties due to the requirements of her job and the location of her injury, which caused increased use of her opposite leg. She related that she began to experience pain in her left knee that came and went until it increased and her knee swelled. Appellant then sought treatment at an emergency room. She stated that she continued to favor her right knee which put more strain on her left knee and caused an injury to that knee.

The employing establishment controverted the claim, contending that appellant never sustained a left knee injury. It further contended that she did not submit any additional medical evidence or restrictions for the knee injury.

In an October 19, 2012 medical report, Dr. Jason A. Conrad, a Board-certified radiologist, advised that a magnetic resonance imaging scan of appellant's left knee revealed a medial meniscal tear and no other evidence of internal derangement. He further advised that she had tricompartmental osteoarthrosis that was moderate in the medial compartment, mild in the patellofemoral joint and minimal in the lateral compartment. Appellant also had moderate-sized knee effusion mild synovitis and a moderate-sized complex popliteal/Baker's cyst.

By letter dated October 30, 2012, OWCP requested that appellant submit additional factual and medical evidence, including a rationalized medical opinion from an attending physician explaining the causal relationship between her current condition and the accepted employment injuries.

In a certificate of medical necessity and prescription dated June 17, 2011, Dr. Steven B. Sanders, a Board-certified orthopedic surgeon, advised that appellant had osteoarthritis and was status post knee replacement.

[2] By decision dated October 29, 2012, OWCP granted appellant a schedule award for 21 percent impairment of the right lower extremity.

In an April 30, 2012 progress note, Michael E. Nicholas, a certified physician's assistant (PA-C), related that appellant was postoperative right knee joint replacement. In progress notes dated October 11 and 24, 2012, Dana A. Petersen, advanced practical nurse, and Mr. Nicholas, respectively, stated that appellant had a medial meniscus tear and arthritis of the left knee.

On October 6, 2012 Dr. Bart E. Petrini, a Board-certified radiologist, reported that an ultrasound of the left lower extremity revealed no evidence of deep venous thrombosis. He advised that there was a Baker's cyst. Also on October 6, 2012 Dr. Petrini reported that an x-ray of the left knee showed moderate degenerative changes affecting the right knee.

In a November 6, 2012 report, Dr. Tom G. Mayer, a Board-certified orthopedic surgeon, noted that appellant was injured at work on August 2, 2008. He stated that a review of her systems, medical, family and social history were unchanged. Dr. Mayer related that appellant was being evaluated for surgery to be performed by Dr. Sanders on November 15, 2012 to treat a nonwork-related left knee injury. He noted that OWCP was going to determine whether the left knee condition was work related as there was no incident outside of work that could have caused the condition. Dr. Mayer reported that appellant had limited range of motion in the right knee area with swelling and erythema. He diagnosed chronic compensable right knee pain.

In a December 20, 2012 decision, OWCP denied appellant's recurrence claim. The medical evidence was found insufficient to establish the claimed disability of September 28, 2012 or that she sustained a left knee injury as a consequence of her accepted August 2, 2008 employment injuries.

On January 11, 2013 appellant requested a telephone hearing with an OWCP hearing representative, but withdrew her request and sought reconsideration on January 14, 2013.

In a January 14, 2013 report, Dr. Mayer noted that appellant was injured at work on August 2, 2008. He obtained a history of her medical treatment, which included surgery on her noncompensable left knee condition under her private insurance as it was not covered by OWCP. Dr. Mayer noted that appellant was being treated for a compensable right knee injury. He advised that she had no restrictions and was capable of performing her full-time, full-duty job at the employing establishment. Dr. Mayer reiterated his prior finding that appellant had limited range of motion in the right knee area and diagnosis of chronic compensable right knee pain. In a February 12, 2013 report, he indicated that she was being treated for a flare-up of right knee pain. On examination of the knee, Dr. Mayer reported a continued severe positive patellar compression test with subpatellar crepitus and particularly lateral tilt of the patella with more medial tenderness.

In a February 27, 2013 report, Dr. Sanders obtained a history that it was almost two years since appellant's right total knee arthroplasty. She still had pain and discomfort with walking, standing and prolonged sitting. Dr. Sanders listed findings on examination and made an assessment of right knee joint replacement. Also on February 27, 2013 he advised, in a duty status report, that appellant's work status would be determined by "Pride Rehab."

In a March 12, 2013 decision, OWCP denied modification of the December 20, 2012 decision.

On April 26, 2013 appellant requested reconsideration.

In an April 6, 2010 report, Kristina White-Ippolito, PA-C, stated that appellant had left plantar fasciitis and right knee osteoarthritis. She was status post right knee arthroscopy with chondroplasty and partial and lateral meniscectomies.

In reports dated January 10, 2011 and August 23, 2012, Mr. Nicholas stated that appellant had left knee osteoarthritis and left foot plantar fasciitis, respectively.

An April 15, 2013 report cosigned by Maile Shea, a registered nurse, and Dr. Mayer noted that appellant was injured at work on August 2, 2008. Appellant's medical treatment and right knee pain were also noted. She was diagnosed as having erythema, swelling and pain in her right knee.

In a June 6, 2013 report, Dr. Sanders again advised that appellant had undergone right knee joint replacement. Appellant had soft tissue discomfort around the right knee. Dr. Sanders advised that her total knee implants were stable and appropriately functioning.

In a June 12, 2013 decision, OWCP denied modification of the March 12, 2013 decision.

LEGAL PRECEDENT -- ISSUES 1 & 2

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[3] This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[4]

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.[5]

[3] 20 C.F.R. § 10.5(x).

[4] *Id.*

[5] *Albert C. Brown*, 52 ECAB 152, 154-55 (2000); *Barry C. Peterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.[6]

ANALYSIS -- ISSUES 1 & 2

The Board finds that appellant failed to submit sufficient medical evidence providing a rationalized, probative opinion which related her claimed recurrence of disability as of September 28, 2012 to her accepted right knee conditions. For this reason, appellant has not discharged her burden of proof to establish that she sustained a recurrence as a result of her accepted right knee conditions.

Appellant has not alleged a recurrence of disability as a result of a change in the nature and extent of her limited-duty job requirements. Also, she has not alleged a recurrence of disability due to a change in the nature and extent of her August 2, 2008 employment-related right knee conditions. Rather, appellant has alleged that these accepted conditions caused her to increase the use of her left leg which caused her left knee condition. She is essentially alleging a consequential injury.[7] Appellant did not submit a medical report from a physician which addresses how her current left knee condition was caused by the accepted conditions.

Dr. Mayer's November 6, 2012 and January 14, 2013 reports noted the August 2, 2008 employment injury and stated that appellant underwent surgery to treat a nonwork-related left knee injury. He listed examination findings and diagnosed chronic compensable right knee pain but provided no explanation as to how or why this pain was so debilitating as to preclude her from working. Similarly, in his February 12 and April 15, 2013 reports, Dr. Mayer noted the August 2, 2008 employment injury and found that appellant had pain, erythema and swelling in her right knee, but provided no left knee diagnosis or opinion on causal relationship between the diagnosed condition and any resultant disability and the accepted injuries. The Board finds that Dr. Mayer's reports are insufficient to establish that she has a disabling left knee condition consequential to her accepted employment injuries. Moreover, it finds that his reports fail to establish that appellant sustained a recurrence of disability causally related to the accepted employment injuries.

The Board finds that Dr. Sanders' certificate of medical necessity, prescription and reports are also insufficient to establish that appellant has a disabling left knee injury as a consequence of the accepted work injuries. Dr. Sanders found that she had right knee osteoarthritis and was status post knee joint replacement, but did not diagnose a left knee condition causally related to the employment injuries. He also did not offer an opinion on appellant's work status as he stated that a determination regarding this matter would be determined by a rehabilitation facility.

[6] *James H. Botts*, 50 ECAB 265 (1999).

[7] A consequential injury is an injury that is the direct and natural result of a compensable primary injury, without an independent intervening cause. *See Albert F. Ranieri*, 55 ECAB 598 (2004); *J.M.*, Docket No. 13-1668 (issued January 6, 2014).

The diagnostic test results of Dr. Conrad and Dr. Petrini addressed appellant's left knee and leg conditions, but did not provide an opinion addressing whether the diagnosed conditions and any resultant disability were caused by the August 2, 2008 employment-related injuries. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[8] The Board finds, therefore, that the reports of Drs. Conrad and Petrini are insufficient to establish appellant's claims.

The progress notes and reports of Mr. Nicholas and Ms. White-Ippolito, physician's assistants and Ms. Petersen, an advanced practical nurse, are of no probative value in establishing appellant's claim as neither a physician's assistant nor a practical nurse is a physician as defined under FECA.[9]

As the medical opinion evidence fails to establish that appellant sustained a left knee condition as a consequence of her accepted August 2, 2008 employment injuries or a recurrence of disability causally related to the accepted employment injuries, the Board finds that she has not met her burden of proof.

On appeal, appellant contended that she sustained left knee and foot injuries as a consequence of her accepted employment-related right knee injuries. For reasons stated, the Board finds that she did not submit any rationalized medical evidence to establish that she sustained an additional condition that was caused, aggravated or a consequence of the accepted employment injuries.

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 failed to establish that she sustained a consequential left knee condition. The Board further finds that she failed to establish a recurrence of disability as of September 28, 2012 causally related to her accepted right knee injuries.

[8] *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

[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).

ORDER

IT IS HEREBY ORDERED THAT the June 12 and March 12, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 3, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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