United States Department of Labor
Employees' Compensation Appeals Board

M.N., Appellant	)	
and	)	**Docket No. 14-484**
	)	**Issued: June 6, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Rochester, MN, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 24, 2013 appellant, through her attorney, filed a timely appeal from a September 13, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her occupational disease 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 established that she sustained a left knee injury causally related to factors of her federal employment.

FACTUAL HISTORY

On December 5, 2012 appellant, then a 35-year-old part-time flexible city carrier, filed an occupational disease claim alleging that on November 17, 2012 she first became aware of her left

[1] 5 U.S.C. § 8101 *et seq.*

knee condition and attributed it to repetitive work duties and falling on ice twice and on uneven sidewalks two to three times.

In an undated activity/work status report, D. Nordquist, a registered nurse and certified nurse practitioner, stated that appellant was able to work within restrictions from December 4, 2012 until her next appointment in four weeks.

A November 21, 2012 activity/work status report contained an illegible signature. It stated that appellant could work with restrictions through December 5, 2012.

In a November 17, 2012 report, Dr. Sameer Nevile, a Board-certified radiologist, advised that an x-ray of the left knee was normal.

In reports dated November 17, 2012, Sonya Ommen, a physician's assistant, obtained a history that appellant had a stiff left knee for one week. Appellant's knee gave out at work on that date. Ms. Ommen noted that appellant delivered mail which involved constant walking. She listed findings on physical and x-ray examination and diagnosed pain and a possible meniscal tear of the left knee.

By letter dated December 28, 2012, the employing establishment controverted the claim, contending that the medical evidence did not support an injury and was not submitted by a physician.

By letter dated January 14, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional factual and medical evidence. OWCP also requested that the employing establishment submit any medical evidence regarding treatment appellant received at its medical facility.

In a January 5, 2008 urgent care report, a registered nurse whose signature is illegible addressed the treatment of lacerations on appellant's left elbow which occurred when she fell at work on that date.

In a November 19, 2012 report, Dr. Benjamin M. Howe, a Board-certified radiologist, stated that x-rays of the left knee were negative.

In a November 21, 2012 report, Dr. Paul M. Robelia, Board-certified in family medicine, listed a history of appellant's left knee pain, medical treatment and social and family background. He provided findings on physical examination and diagnosed left knee injury, rule out a meniscal tear. Dr. Robelia also diagnosed upper respiratory infection with resolved viral exanthema. He renewed appellant's physical restrictions and recommended additional diagnostic testing. In a February 6, 2013 report, Dr. Robelia provided physical examination findings and advised that she was status post left knee surgery with findings of chondromalacia and intact medial and lateral meniscus and cruciates.

On November 23, 2012 Dr. Matthew A. Frick, a Board-certified radiologist, reported that a magnetic resonance imaging (MRI) scan of the left knee revealed intrasubstance degeneration of the posterior horn of the lateral meniscus. The examination also revealed an extension of the abnormal signal intensity to the inferior articular surface on a single image suggesting an oblique

tear. Dr. Frick reported grade 2 chondromalacia patella and moderate chondromalacia involving the lateral aspect of the medial femoral condyle adjacent to the notch with possible delamination. A tiny popliteal cyst and benign bone island in the lateral femoral condyle and normal islands of red marrow in the distal femur were present. Dr. Frick advised that the knee was otherwise negative. Specifically, the anterior and posterior cruciate ligaments, medial and lateral collateral ligaments and medial meniscus were intact and normal in appearance.

Dr. Thomas W. Miller, Board-certified in family medicine, reported on November 27, 2012 that an x-ray of the left knee revealed tiny effusion or synovitis.

In a November 30, 2012 report, Dr. Shawn C. Oxentenko, a Board-certified physiatrist, obtained a history that appellant sustained four falls on the ice while delivering mail. Appellant had suffered from popliteal knee pain over the last year. On November 17, 2012 her knee hyperextended while walking on an even floor at work. Appellant wore a brace that seemed to help, although she basically off-loaded the entire left leg. She rated her pain as 10 out of 10 when it was severe. Dr. Oxentenko listed findings on physical examination and diagnosed left knee pain. He reviewed the November 23, 2012 left knee MRI scan and advised that it showed what appeared to be a grade 3 posterior horn meniscus tear and degenerative change.

In reports dated December 4, 2012 to January 17, 2013, physical therapists addressed the treatment of appellant's left knee.

On January 15, 2013 Dr. Michael G. Rock, a musculoskeletal oncologist, reported that appellant was scheduled to undergo left knee arthroscopic surgery on January 18, 2013.

In activity/work status reports dated January 17 and 24, 2013, Ms. Nordquist advised that appellant was unable to work from January 18 through February 10, 2013. She could work with restrictions from February 11 to 20, 2013. Appellant could work without restrictions as of February 25, 2013.

A laboratory report dated January 29, 2013 provided blood test results.

In reports dated January 17 and 18, 2013, Dr. Rock addressed appellant's left knee condition and related that he performed arthroscopic surgery on January 18, 2013. In a January 27, 2013 attending physician's form report, he listed a history that appellant felt discomfort in her knee in early 2012. Appellant's pain became worse by November 2012 following a fall at work. She twisted her left knee and felt pain. Dr. Rock diagnosed diffuse chondromalacia of the left knee. He indicated with an affirmative check mark that the diagnosed condition was aggravated by an employment activity. Dr. Rock stated that the condition could have resulted from a twisting injury. He advised that appellant was partially disabled from December 4, 2012 to February 12, 2013. Appellant could resume her regular work duty on February 11, 2013. In a February 7, 2013 report, Dr. Rock related that it was difficult to determine why she had blistering on the articular surface and loss of surface definition of numerous segments within the same knee joint. He stated that this could be a result of repetitive subacute injuries over time. Appellant did not remember having any one particular injury except the one precipitating her being seen by Dr. Rock following a twisting injury at work. She related that she had discomfort in her left knee during the preceding year, but it was not of the

magnitude necessitating medical intervention or assessment. Appellant did not remember having any previous repetitive knee injuries with the sole exclusion of her singular responsibility as a postal worker to walk on different terrain and adjust appropriately to walking conditions. Dr. Rock stated that her responsibility at work included walking considerable distances and negotiating undulating terrain and uncertain conditions which could have caused micro injuries to the articular cartilage precipitating in the blistering noted at the time of surgery. He concluded that there was no other reason that could describe why somebody in a 35-year-old age group would have the blistering phenomenon that was seen diffusely throughout the knee. In a February 25, 2013 report, Dr. Rock opined that appellant would be better served by working in a stationary job involving office activities at the employing establishment to avoid her current responsibility which involved walking on a delivery route.

In a January 28, 2013 narrative statement, appellant related that she first experienced left knee symptoms one year prior at work. The week before November 17, 2012 she was sick and experienced stiffness and swelling in her left knee.

In a March 20, 2013 decision, OWCP denied appellant's claim. It found that the medical evidence was insufficient to establish that her left knee condition was causally related to her work as a city carrier.

By letter dated April 19, 2013, appellant, through her attorney, requested a telephone hearing with an OWCP hearing representative. She submitted medical evidence.

In reports dated April 2 and 4, 2013, Dr. Jennifer L. Horn, Board-certified in family medicine, listed a history that appellant had left knee pain for one and a half years. She worked as a mail carrier, fell on November 17, 2012 and underwent surgery on January 18, 2013. Dr. Horn also provided a history of appellant's medical and social background. She listed findings on physical examination and diagnosed knee pain and functional impairment.[2]

In a February 7, 2013 report, Dr. Robelia stated that he saw appellant on November 21, 2013 for a left knee injury and provided a history of her left knee treatment. He advised that her chondromalacia or roughening/blistering of the cartilage had most likely been present for some time, but that her occupational activities of November 17, 2012 certainly exacerbated the condition and clearly escalated her pain based on his review of a document entitled "duties and requirement of the letter carrier." Dr. Robelia concluded that appellant's postoperative recovery pace had been normal and satisfactory.

A November 17, 2012 urgent care report from K. Meeo, a registered nurse, listed a history that appellant had stiffness in the knee all week. Suddenly, appellant's knee gave out and she experienced pain behind it.

In a September 13, 2013 decision, an OWCP hearing representative affirmed the March 20, 2013 decision. The hearing representative found that the medical evidence was

[2] Reports from physical therapists addressed the treatment of appellant's left knee pain on January 17 and April 11 and 22, 2013.

insufficient to establish that appellant sustained a left knee condition causally related to the accepted work duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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; that an injury was sustained while 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.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty and must be supported by medial rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[6] Neither the fact that appellant's condition became apparent during a period of employment nor his or her belief that, the condition was caused by his or her employment is sufficient to establish a causal relationship.[7]

ANALYSIS

OWCP accepted as factual that appellant performed repetitive work duties and fell on several occasions while working as a part-time flexible city carrier. The Board finds that she failed to establish a causal relationship between her left knee condition and the accepted employment factors.

Dr. Rock's January 27, 2013 attending physician's form report listed a history that appellant felt discomfort in her knee in 2012. Appellant's pain worsened when she twisted her

[3] 5 U.S.C. §§ 8101-8193.

[4] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *id.* at 351-52.

[7] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

left knee and fell at work in November 2012. Dr. Rock indicated with an affirmative check mark that she had diffuse chondromalacia of the left knee that was aggravated by an employment activity. He stated that appellant's condition could have resulted from a twisting injury. Dr. Rock advised that she was partially disabled from December 4, 2012 to February 12, 2013. He did not adequately explain how the accepted work duties aggravated or contributed to appellant's diagnosed left knee condition or caused disability. In a February 7, 2013 report, Dr. Rock stated that it was difficult to determine why she had blistering on the articular surface with loss of surface definition of numerous segments within the same knee joint. He advised that this could have resulted from repetitive subacute injuries over time. Dr. Rock noted that appellant could only recall one precipitating injury, a twisting injury at work. Appellant did not remember any previous repetitive knee injuries. Dr. Rock also related that her work duty which involved walking considerable distances and negotiating undulating terrain and uncertain conditions could have caused micro injuries to the articular cartilage which precipitated blistering. He concluded that there was no other reason why appellant who was in a 35-year-old age group would have the blistering phenomenon that was seen diffusely throughout her knee. Dr. Rock's opinion that her left knee condition could have resulted from her repetitive work duties is speculative.[8] None of his reports provided an adequate explanation addressing how appellant's work duties caused or aggravated her diagnosed left knee conditions. Dr. Rock addressed her left knee arthroscopic surgery and his recommendation that she perform a stationary job. He failed to provide sufficient medical opinion addressing the causal relationship between appellant's left knee condition and the accepted employment factors. Medical evidence which does not offer a rationalized opinion regarding the cause of an employee's condition is of limited probative value.[9] The Board finds that Dr. Rock's reports are insufficient to establish appellant's claim.

Dr. Robelia's February 7, 2013 report noted that appellant's work activities on November 17, 2012 exacerbated her chondromalacia or roughening/blistering of the cartilage of her left knee and clearly escalated her pain. He based his opinion on review of a description of her letter carrier duties. While his opinion is generally supportive of causal relationship, Dr. Robelia did not provide sufficient explanation of how appellant's employment duties caused or contributed to the diagnosed conditions. The Board has found that medical opinion not based and not fortified by medical rationale is of diminished probative value.[10] Dr. Robelia's November 21, 2012 and February 6, 2013 reports listed a history of appellant's left knee condition and medical treatment and findings on physical examination. He diagnosed left knee injury, rule out a meniscal tear and upper respiratory infection with resolved viral exanthema. Dr. Robelia advised that appellant was status post left knee surgery with findings of chondromalacia and intact medial and lateral meniscus and cruciates. He did not provide an opinion on whether the diagnosed left knee conditions were caused or aggravated by the

[8] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (the Board has generally held that opinions such as the condition is probably related, most likely related or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662 (2005) (medical opinions which are speculative or equivocal are of diminished probative value).

[9] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

[10] *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

accepted employment factors.[11] The Board finds that Dr. Robelia's reports are insufficient to establish appellant's claim.

Dr. Oxentenko's November 30, 2012 report listed a history that appellant fell four times on the ice while delivering mail and that on November 17, 2012 her knee hyperextended while she was walking on the floor at work. He provided physical examination findings and reviewed a November 23, 2012 left knee MRI scan. Dr. Oxentenko diagnosed left knee pain and what appeared to be a grade 3 posterior horn meniscus tear and degenerative change. The Board notes that his finding that appellant had what appeared to be a grade 3 posterior horn meniscus tear is speculative.[12] Dr. Oxentenko did not provide an opinion on whether appellant's left knee conditions were causally related to the accepted employment duties.[13]

Dr. Horn's April 2 and 4, 2013 reports listed a history that appellant had suffered from left knee pain for one and a half years and that on November 17, 2012 she fell at work. She provided findings on physical examination and diagnosed left knee pain and functional impairment. It is well established that pain is a description of a symptom and not considered a compensable medical diagnosis.[14] Dr. Horn did not provide an adequate opinion on whether appellant's left knee pain and functional impairment were caused or aggravated by the accepted employment factors.[15] The Board finds that appellant's reports are insufficient to establish her burden of proof.

The diagnostic test results from Drs. Nevile, Howe, Frick and Miller and laboratory report dated January 29, 2013 are insufficient to establish appellant's claim. Drs. Nevile and Howe found that left knee x-rays were normal. They did not diagnose a left knee condition. Similarly, the laboratory test results failed to diagnose a left knee condition. Neither Dr. Frick nor Dr. Miller provided an opinion on whether the diagnosed left knee conditions were caused or aggravated by the established employment factors.[16] The Board finds that these reports are insufficient to establish appellant's claim.

The November 21, 2012 activity/work status report which contained an illegible signature stated that appellant could work with restrictions through December 5, 2012. This evidence has no probative value, as it is not established that the author is a physician.[17]

[11] *See* cases cited, *supra* note 8.

[12] Medical opinions that are speculative or equivocal in character are of little probative value. *See Kathy A. Kelley*, 55 ECAB 206 (2004).

[13] *See* cases cited, *supra* note 8.

[14] *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 8, 2008).

[15] *See* cases cited, *supra* note 8.

[16] *Id.*

[17] *See D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

The reports from Ms. Nordquist and Ms. Meeo, both registered nurses, the registered nurse whose signature is illegible; Ms. Ommen, a physician's assistant; and those from physical therapists are insufficient to establish appellant's claim. Healthcare providers such as a registered nurse, nurse practitioner, physician's assistant or physical therapist are not a physician as defined under FECA. These reports do not constitute competent evidence to establish a medical condition, disability or causal relationship.[18]

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a left knee condition causally related to the accepted employment factors. Appellant did not meet her burden of proof.

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 left knee injury causally related to factors of her federal employment.

[18] The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. *See* 5 U.S.C. § 8102(2); *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as nurses, physician's assistants and physical therapists are not competent to render a medical opinion under FECA).

ORDER

IT IS HEREBY ORDERED THAT the September 13, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 6, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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