United States Department of Labor
Employees' Compensation Appeals Board

C.P., Appellant	)	
and	)	**Docket No. 13-853**
	)	**Issued: March 6, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Waltham, MA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 26, 2013 appellant, through her attorney, filed a timely appeal of the December 11, 2012 merit decision 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.

ISSUE

The issue is whether appellant established that she sustained an injury in the performance of duty on June 14, 2011, as alleged.

On appeal, appellant's counsel contends that the decision is contrary to fact and law.

FACTUAL HISTORY

On August 13, 2011 appellant, then a 56-year-old mail handler, filed a traumatic injury claim alleging that on June 14, 2011, while pushing a postcon onto a truck, she felt a burning

[1] 5 U.S.C. § 8101 *et seq.*

sensation in her left knee. She alleged that, as a result of this incident, she sustained a torn meniscus of the left knee. The employing establishment controverted the claim.

By letter dated August 30, 2011, OWCP requested that appellant submit further information, including medical evidence, in support of her claim.

In response, appellant submitted an attending physician's report dated August 23, 2011 wherein by Dr. Kai Mithoefer, a Board-certified orthopedic surgeon, diagnosed meniscus tear, which he attributed to an employment injury of June 14, 2011. Dr. Mithoefer noted that surgery was scheduled for September 1, 2004. In an attending physician's report completed on a form for authorization for examination and/or treatment, also dated August 23, 2011, he again listed the diagnosis as meniscal tear and noted that appellant could perform light work, but that she would be totally disabled for a period of time after surgery. In a duty status report of the same date, Dr. Mithoefer stated that appellant reported that on June 14, 2011 she was pushing a postcon onto a truck and felt a burning sensation in left knee; he opined that the resulting meniscus tear was due to the employment injury. In a September 13, 2011 note, he indicated that she was status post left knee partial medial meniscetomy and anterior cruciate ligament (ACL) thermoplasty. Dr. Mithoefer opined that appellant was doing well. He indicated that the ACL as well as her meniscal tear was partially related to her injury at work on June 14, 2011 since she did not have any symptoms before the employment incident and that the stretching of her ligaments is consistent with an acute injury rather than a chronic injury.

By decision dated October 3, 2011, OWCP denied appellant's claim because she had not established that she sustained an injury causally related to the accepted work event.

On October 13, 2011 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

In further support of her claim, appellant submitted additional evidence. In a September 1, 2011 operative report, Dr. Mithoefer indicated that she underwent a left knee arthroscopy, partial medial meniscectomy and ACL thermoplasty. In an October 11, 2011 work capacity evaluation and an October 22, 2011 note, he opined that appellant was stable and able to return to work as of October 15, 2011 without restrictions.

At the telephonic hearing held on February 2, 2012, appellant described the incident of June 14, 2011, noted that she saw Dr. Matthew Shuster, a Board-certified internist, on June 20, 2011 and that he recommended that she see an orthopedic surgeon. She discussed her treatment with Dr. Mithoefer and with a physician's assistant. Appellant noted that she worked up until the date of the surgery. The hearing representative explained to appellant that a complete rationalized medical report must be submitted in support of her claim and the record was left open for 30 days for such a report to be submitted.

In a February 21, 2012 report, Dr. Shuster indicated that he was the primary care physician for appellant, that she was out of work on June 20 and 21, 2011 due to a left knee injury that occurred on June 14, 2011 and that she was being followed by orthopedics.

In February 27, 2012 report, Dr. Milhoefer stated that appellant was being followed for a left knee medial meniscus tear that occurred in June 2011 at work when she was pushing postcons onto a truck. He noted that she felt a burning sensation to her left knee but thought it

was nothing, so she continued working and the symptoms became worse over time. Dr. Milhoefer noted that surgery was scheduled on September 1, 2011 for a left knee arthroscopy, partial medial meniscectomy and ACL thermoplasty and appellant was out of work for recovery from September 1 through October 15, 2011.

By decision dated April 2, 2012, an OWCP hearing representative affirmed the denial of appellant's claim.

On April 17, 2012 appellant requested reconsideration. In support of the claim, OWCP submitted an August 7, 2011 magnetic resonance imaging (MRI) scan report, which was interpreted by Dr. Eric D. Cortell, a Board-certified radiologist, as showing a degenerative medial meniscal tear in the mid body extending into the posterior medial corner along with the undersurface. The MRI scan was ordered on July 28, 2011 at which point the physician's assistant noted that appellant had three to four months of left knee pain with no recent direct trauma.

By decision dated December 11, 2012, OWCP denied modification of the previous decisions.

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] In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place and in the manner alleged.[4]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[5] The medical evidence required to

[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] *Linda S. Jackson*, 49 ECAB 486 (1998).

[5] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

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.[6]

ANALYSIS

On August 13, 2011 appellant filed a traumatic injury claim alleging that, as a result of an employment incident on June 14, 2011, she sustained a torn meniscus of the left knee. There is no dispute that she experienced the employment incident, as described, or that she suffered from a torn meniscus of the left knee for which she had underwent surgery on September 1, 2011. However, OWCP denied appellant's claim because she had not established a causal relationship between the accepted employment incident and her torn meniscus.

The Board finds that the reports of Drs. Shuster and Cortell are insufficient to establish this causal relationship. Dr. Shuster merely indicated that appellant was out of work on June 20 and 21, 2011 due to a knee injury that occurred on June 14, 2011. He did not describe the employment incident, give a medical diagnosis or offer any explanation with regard to causal relationship. Dr. Cortell merely interpreted the MRI scan as showing a degenerative medial meniscal tear; he offered no opinion as to causal relationship.

Dr. Milhoefer made some comments with regard to appellant's employment incident. In an August 23, 2011 duty status report, he indicated that on June 14, 2011 appellant was pushing a postcon onto a truck when she felt a burning sensation in her knee. Dr. Milhoefer also completed an attending physician's report on the same date and indicated that appellant's meniscal tear was caused by her employment injury of June 14, 2011. On September 13, 2011 he indicated that her meniscal tear was partially related to her injury at work on June 14, 2011 since she did not have any symptoms before and that the stretching of her ligaments is consistent with an acute injury rather than a chronic injury. In a February 27, 2012 follow-up note, Dr. Milhoefer reiterated that appellant's injury occurred at work when she was pushing postcons and felt a burning sensation to her left knee which at first she thought was nothing, but that it became worse over time. His brief comments do not constitute a rationalized medical report linking the accepted employment incident to a diagnosed medical condition. Dr. Milhoefer does not provide a detailed report wherein he describes the mechanism of the injury, appellant's medical history or prior injuries and detailed results of a physical examination, nor does he provide a detailed medical explanation as to why he believed that the incident as described by appellant resulted in appellant's torn meniscus of the left knee.

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

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

establish causal relationship.[7] As appellant did not establish that her medical condition was causally related to the accepted employment incident, she has failed to 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 not established that she sustained an injury in the performance of duty on June 14, 2011, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 11, 2012 is affirmed.

Issued: March 6, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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