United States Department of Labor
Employees' Compensation Appeals Board

B.H., Appellant	)	
and	)	**Docket No. 15-0091**
	)	**Issued: August 10, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Jersey City, NY, Employer	)	

Appearances:
James D. Muirhead, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 15, 2014 appellant, through counsel, filed a timely appeal from an August 28, 2014 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.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's entitlement to compensation on September 17, 2012 as she no longer had residuals of an accepted left ankle contusion; and (2) whether appellant met her burden of proof to establish a left knee condition caused or aggravated by her May 8, 2012 employment injury.

On appeal counsel asserts that the weight of the medical evidence rests with the opinion of appellant's attending physician who found her left knee condition was caused or aggravated by the May 8, 2012 employment injury.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On May 8, 2012 appellant, then a 54-year-old mail handler, filed a traumatic injury claim alleging that she injured her left ankle that day when she tripped while unloading a trailer of mail. She stopped work and was seen at the Christ Hospital emergency room. A nurse practitioner indicated that appellant should stay off her ankle for two days and see her private physician. On May 15, 2012 Joshua Falto, a physician assistant, stated that appellant was under his care for a left ankle, left knee, and right hand injury after a fall at work on May 8, 2012. Appellant could not return to work until further evaluation. In a duty status report dated May 11, 2012, Dr. David N. Feldman, a Board-certified orthopedic surgeon, diagnosed left ankle and knee sprains and advised that she could not work. In a May 16, 2012 attending physician's report, he noted the history of injury and advised that appellant had previous left knee surgery. Dr. Feldman indicated that the left ankle and knee were negative for fracture, diagnosed sprains of the knee and ankle, and advised by checking a form box "yes" that the diagnosed conditions were caused by work activities. An ankle brace was provided. On June 5 and 14, 2012 Sharon Lee, a physician assistant, advised that appellant should remain off work until July 1, 2012.

By letter dated June 22, 2012, OWCP informed appellant that when her claim was received it appeared to be a minor injury and was administratively handled but that the claim was being reopened and would be formally adjudicated. It noted that a contusion of the left ankle was accepted as compensable but that injuries to the left knee and right hand were not. Appellant was informed of the evidence needed to support her request to expand the accepted conditions. She received continuation of pay for the period May 9 to June 22, 2012 and thereafter submitted claims for compensation.

A May 8, 2012 triage report from the Christ Hospital emergency department, completed by a registered nurse, indicated that appellant's chief complaint was her right hand, left knee, and top of her left foot. A hospital physical examination form, bearing an illegible signature, reported appellant with right hand, left foot and knee pain following an injury and that appellant was medicated. Right hand and left ankle x-rays were normal. Dr. Ronald Bookbinder, who practices emergency medicine, noted appellant's complaints of right hand and left foot pain. Physical examination findings included left foot tenderness. Dr. Bookbinder reviewed the x-rays and diagnosed hand contusion and foot sprain. The foot was wrapped with an ace bandage and appellant was discharged on medication, to follow-up with her private physician.

In a May 11, 2012 attending physician's report, Dr. Feldman noted the history of injury, stating that appellant caught her ankle when she fell. Appellant had an ankle air cast and prescribed medication. On June 1, 2012 Dr. Feldman indicated that she was seen in follow-up for left knee and ankle pain. He advised that a May 11, 2011 left knee magnetic resonance imaging (MRI) scan showed extensive marrow abnormality involving the medial greater than lateral femoral condyles with a differential diagnosis including osteonecrosis, infection, inflammation, or neoplasm thought to be less likely; possible distal femoral intraosseous lipoma; grade 1 sprain of the medial collateral ligament; grade 4 chondromalacia patellae, lateral patellar facet; moderate suprapatellar effusion; and grade 2 signal posterior horn medial meniscus. Dr. Feldman noted that appellant had a previous left knee arthroscopy on June 3, 2011, provided findings, and advised that right wrist, hand, and left ankle sprains had resolved. He diagnosed chondromalacia patella of the knee and effusion and recommended a knee sleeve and cane.

Dr. Feldman indicated that appellant could return to modified duty. In treatment notes dated June 5 to July 13, 2012, he noted that she had continued moderate left knee pain and provided examination findings. Dr. Feldman further noted that appellant had a history of cardiac valve replacement and back pain. Diagnoses included osteoarthritis, chondromalacia patella, effusion, and pain of the left leg. Dr. Feldman anticipated that appellant would eventually need a total knee replacement for pain and recommended a new MRI scan study. A return to work was pending authorization of the MRI scan to assess the extent of trauma.

A July 30, 2012 left knee MRI scan study showed moderate joint effusion and extensive marrow and cortical changes throughout the distal femur. It was noted that Paget's disease and/or a treated cartilage lesion could give this appearance. Also shown were degeneration and fraying of the posterior horn and body of the medial meniscus with no discrete meniscal tear and moderate joint effusion. A computerized tomography (CT) scan of the knee and distal femur was recommended. On August 9, 2012 Dr. Feldman reviewed the MRI scan study and noted left knee examination findings of crepitation and joint line tenderness with no laxity. He recommended a CT scan and medical clearance for total knee replacement surgery. Dr. Feldman continued to advise that appellant could not return to work.

In July 2012 OWCP referred appellant to Dr. Jeffrey F. Lakin, a Board-certified orthopedic surgeon, for a second opinion evaluation. In an August 6, 2012 report, Dr. Lakin noted the history of injury, his review of the medical record and statement of accepted facts, and appellant's complaint of left knee pain. He found that she had previous left knee arthroscopy but that she could not remember how she injured her knee at that time. Examination of the left knee demonstrated minimal patellofemoral crepitus and patellofemoral grind with no joint line tenderness and well-healed arthroscopic portals. Range of motion demonstrated less than three degrees of extension to 110 degrees of flexion. There was no varus or valgus instability, and motor strength of quadriceps and hamstrings was 5/5. In answer to specific OWCP questions, Dr. Lakin advised that appellant's left ankle contusion had completely resolved and, regarding that injury, she could return to full duty without restriction. In an attached work capacity evaluation, he advised that she had reached maximum medical improvement and could return to her regular job.

In undated correspondence received by OWCP on August 20, 2012, appellant requested that her accepted conditions be expanded to include her left knee, stating that she injured it on May 8, 2012.

An MRI scan of the left knee on August 21, 2012 demonstrated a mild sprain of the anterior cruciate ligament; a grade 2 sprain of the medial collateral ligament; that the body segment and posterior horn of the medial meniscus appeared diminutive with marked heterogeneous intrasubstance signal possibly related to previous arthroscopic surgery or meniscal tear, grade III-IV chondromalacia over the median ridge as well as the lateral aspect of the medial patellar facet without significant subchondral marrow change grade III-IV chondromalacia over the middle trochlear groove, the appearance of significant cortical thickening of the distal femoral diaphysis which could be seen in Paget's disease, and low signal material with associated mild surrounding hyperintense signal within the distal femoral metadiaphysis that likely reflected sequelae of previous surgery with reported filling of the area of avascular necrosis with calcium phosphate cement. An August 21, 2012 CT scan of the left

leg showed similar results. The left ankle joint was intact. Limited CT evaluation demonstrated intact soft tissues and musculature.

In a supplemental report dated August 29, 2012, Dr. Lakin noted appellant's history of previous left knee surgery in May 2011. His left knee examination demonstrated minimal patellar femoral crepitus and no joint line tenderness, well-healed arthroscopic portals, no instability, and motor strength of 5/5. Dr. Lakin concluded that there was absolutely no relationship between the current left knee findings and the May 8, 2012 employment injury. Rather, he opined that the knee findings were related to a preexisting condition.

On August 29, 2012 Dr. Feldman reported that he first examined appellant on May 11, 2012 when she reported an injury to her left knee, left ankle, and left hand at work on May 8, 2012. He stated that each subsequent visit was related to her complaints of ankle and knee pain and that, while her ankle condition had resolved, her left knee pain was getting worse and was clearly related to her fall at work.

On September 7, 2012 OWCP denied appellant's claim for disability compensation for the period June 23 to September 7, 2012 because the medical evidence did not establish that she was totally disabled due to conditions caused by the May 8, 2012 employment injury. On September 11, 2012 appellant, through counsel, requested a hearing.

In a September 17, 2012 decision, OWCP found that appellant no longer had disability or residuals due to the accepted left ankle condition and terminated her entitlement to compensation benefits.[2] It also noted that her left knee condition was preexisting. Counsel also requested a hearing from the September 17, 2012 decision and asked that both matters be heard at the same time.

Dr. Feldman continued to submit treatment notes describing appellant's left knee condition. In a September 26, 2012 report, he indicated that she had been under his care since May 11, 2012 for a May 8, 2012 employment injury to her left knee, left ankle, and right hand. Dr. Feldman stated that appellant's knee pain was the most annoying with swelling and increased pain with weight bearing, that she was limited to walking two to three blocks, and that she had difficulty with stairs. He reported that on June 30 2011 she had left knee arthroscopy. Appellant's last visit regarding that procedure was October 31, 2011 and that she continued to do well with only occasional pain until the May 8, 2012 injury. Dr. Feldman noted physical findings of decreased knee range of motion with crepitation, tenderness, and effusion. He advised that appellant's pain and disability had progressed, that she was unable to walk without a cane, could not stand for long periods, was on narcotic medication, and now needed total knee replacement surgery. Dr. Feldman described her job duties and indicated that, due to pain, she was disabled from the mail handler position because she was unable to bend, stoop, kneel, climb, lift heavy packages, twist or pivot on the knee. He concluded that the May 8, 2012 fall exacerbated appellant's underlying condition, increasing her pain, and disability.

At the hearing, held on December 12, 2012, appellant testified that she was out of work from June to October 2011 for nonwork-related left knee surgery performed by Dr. Feldman's

[2] The record reflects that appellant received no wage-loss compensation under this claim.

associate. She described her job duties, that she injured her left ankle, left knee, and right hand on May 8, 2012 and described her treatment at Christ Hospital. Appellant indicated that she then came under the care of Dr. Feldman who recommended a total knee replacement. Counsel maintained that the May 8, 2012 employment injury caused a permanent aggravation of appellant's left knee arthritis and that Dr. Feldman's opinion was sufficient to establish entitlement.

On February 20, 2013 an OWCP hearing representative found that appellant's left ankle condition had resolved and that she did not sustain a left knee injury on May 8, 2012. He affirmed OWCP's findings.

On October 7, 2013 counsel requested reconsideration of the February 20, 2013 decision and prior decisions. Dr. Feldman continued to submit treatment notes and reports describing appellant's condition and advising that she could not work. On May 23, 2013 he reiterated his request for authorization for left total knee replacement surgery. A June 24, 2013 MRI scan study of the left ankle demonstrated a chronic mild type 2 tear of the distal posterior tibial tendon with no evidence of talonavicular fault or *pes planus*. On March 20, 2014 Dr. Feldman described appellant's care since May 11, 2012. He found that her left knee arthritic condition progressively worsened and that on February 4, 2014 she underwent left total knee replacement surgery. Dr. Feldman described appellant's postoperative care, noting that she still had moderate discomfort. He concluded that the May 8, 2012 employment injury exacerbated her underlying left knee arthritic condition and accelerated her symptomatology to the point that she required a total knee replacement, noting that she had previously done well after a knee arthroscopy the year previously and was able to do her job as a mail handler until the May 8, 2012 injury.

In a merit decision dated August 28, 2014, OWCP found that the weight of the medical evidence rested with the opinion of Dr. Lakin regarding whether appellant's left knee condition was related to the May 8, 2012 employment injury and denied modification of the February 20, 2013 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[3] OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[4]

ANALYSIS -- ISSUE 1

On May 8, 2012 appellant sustained a left ankle contusion when she tripped while unloading a trailer of mail. The Board finds that OWCP properly terminated appellant's entitlement to compensation benefits on September 17, 2012 for the accepted left ankle

[3] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[4] *Id.*

contusion because the medical evidence established that the accepted condition had resolved. On August 6, 2012 Dr. Lakin, an OWCP referral physician, advised that appellant's left ankle contusion had completely resolved and she could return to full duty without restriction regarding that injury. On August 29, 2012 Dr. Feldman, an attending orthopedic surgeon, also advised that appellant's ankle condition had resolved. There is no additional contemporaneous medical evidence that addresses appellant's ankle condition.

The Board therefore concludes that OWCP properly terminated her entitlement to wage-loss and medical benefits for this condition on September 17, 2012.[5]

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 regarding this issue.

LEGAL PRECEDENT -- ISSUE 2

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[6] 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 employee.[7] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[8]

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[9] The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination, and

[5] The Board notes that a pretermination notice was not issued in this case. However, OWCP procedures provide that a notice is not required if the treating physician indicates further medical treatment is not necessary or treatment has ended. If the claimant's treating physician has indicated that medical treatment for the work-related condition has ended, or states that further medical treatment is not necessary for the work-related condition, medical benefits may be terminated without providing the claimant prior notice, but if the claimant is in the receipt of compensation benefits, a pretermination notice is needed to terminate such benefits. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4.1(8) (February 2013). In this case, as noted above, on August 29, 2012 Dr. Feldman, an attending orthopedic surgeon, advised that appellant's ankle condition, the accepted condition in this case, had resolved. As appellant had never received wage-loss compensation under this claim, a pretermination notice was not required.

[6] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[7] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[8] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[9] 5 U.S.C. § 8123(a); *see Y.A.*, 59 ECAB 701 (2008).

OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[10]

ANALYSIS -- ISSUE 2

The Board finds this case is not in posture for decision as to whether appellant's diagnosed left knee condition was caused or aggravated by the May 8, 2012 employment injury.

In its September 17, 2012, February 20, 2013, and August 28, 2014 merit decisions, OWCP found that appellant had not established a left knee condition causally related to the May 8, 2012 incident, noting that the weight of the medical opinion evidence rested with Dr. Lakin, an OWCP referral physician. The Board, however, finds that a conflict exists in the medical evidence between Dr. Lakin and appellant's attending orthopedic surgeon, Dr. Feldman, with respect to whether the fall at work on May 8, 2012 caused or aggravated a preexisting left knee condition.[11]

Dr. Feldman first saw appellant on May 11, 2012, three days after the employment injury. He furnished treatment notes and reports from that day through March 20, 2014, following total knee replacement surgery. Dr. Feldman reported a history that appellant previously had arthroscopic surgery on her left knee on June 3, 2011 but that she was able to return to mail handler duties in October 2011 and did well until the fall on May 8, 2012. On August 9, 2012 he noted his review of a July 30, 2012 MRI scan and noted physical examination findings of left knee crepitation and joint line tenderness. An additional MRI scan was completed on August 21, 2012. In an August 29, 2012 report, Dr. Feldman noted that appellant's left knee condition progressed following her first visit on May 11, 2012, and on September 26, 2012 indicated that she had increased knee pain with weight bearing that limited her activities and that she had physical findings of decreased knee range of motion, crepitation, tenderness, and effusion. He advised that she was disabled from the mail handler position because she could not bend, stoop, kneel, climb, lift heavy packages, twist or pivot on the knee. Dr. Feldman concluded that the May 8, 2012 fall exacerbated appellant's underlying condition to the degree that she was disabled. On March 20, 2014 he reiterated that the May 8, 2012 employment injury exacerbated an underlying arthritic condition and accelerated her symptomatology to the point that she required total knee replacement, which was done on February 4, 2014.

Dr. Lakin, OWCP referral physician who had reviewed the medical record and statement of accepted facts, examined appellant on August 6, 2012. He indicated that she had previous left knee arthroscopic surgery, but that she could not remember how she injured her knee at that time. Dr. Lakin listed examination findings and concluded that the left ankle contusion had resolved. In an August 29, 2012 supplemental report, he noted that appellant had left knee surgery in May 2011. Dr. Lakin opined that there was absolutely no relationship between the current left knee findings and the May 8, 2012 employment injury. Rather, he considered the knee findings were related to a preexisting condition.

[10] 20 C.F.R. § 10.321.

[11] *F.B.*, Docket No. 13-2066 (issued March 11, 2014).

The Board finds that the opinion of Dr. Feldman is of equal weight to the opinion of Dr. Lakin. Dr. Feldman and Dr. Lakin reached opposite conclusions regarding whether appellant's diagnosed left knee condition was caused or aggravated by the May 8, 2012 employment injury. Dr. Lakin opined that appellant's condition was preexisting and not related to the employment injury. Dr. Feldman opined that her preexisting condition was permanently aggravated by the May 8, 2012 fall. When there is a conflict of opinion between the claimant's attending physician and the physician performing an examination for the government, OWCP shall appoint a third physician to resolve the disagreement.[12] Where a person has a preexisting condition that is not disabling, but which becomes disabling because of aggravation causally related to employment, then regardless of the degree of such aggravation, the resulting disability is compensable.[13]

Upon return of the case record, OWCP should refer appellant, the case record, a statement of accepted facts, and appropriate questions, to a Board-certified specialist to determine if appellant's left knee condition is causally related to the May 8, 2012 employment injury, either directly or through aggravation, precipitation, or acceleration. Following this and any other development deemed necessary, OWCP shall issue an appropriate decision on the merits of appellant's claim.

CONCLUSION

The Board finds that OWCP properly terminated appellant's entitlement to compensation on September 17, 2012 because she no longer had residuals of an accepted left ankle contusion, and that a conflict in medical opinion evidence exists regarding whether her left knee condition was caused of aggravated by a May 8, 2012 employment injury.

[12] *Supra* note 8.

[13] *A.M.*, Docket No. 14-320 (issued November 21, 2014).

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2014 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: August 10, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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