United States Department of Labor
Employees' Compensation Appeals Board

V.D., Appellant	)	
and	)	**Docket No. 15-1169**
	)	**Issued: December 9, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Rock Island, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On April 28, 2015 appellant filed a timely appeal from a March 10, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (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 met his burden of proof to establish a right knee injury causally related to an April 22, 2014 employment incident.

On appeal appellant contends that the medical evidence established his claim. He also argues that his physician initialed all of the reports by nonphysicians.

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[1] Appellant requested oral argument before the Board. By order dated October 6, 2015, the Board denied appellant's request for oral argument as the issue on appeal required evaluation of the medical evidence and could be adequately addressed in a decision based on a review of the case record.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 22, 2014 appellant, then a 49-year-old city letter carrier, filed a traumatic injury claim alleging that on April 22, 2014 he injured his right knee when, after delivering mail at a resident's mailbox, he continued down the stairs and his knee popped.

In progress reports dated April 22 and 23, and May 5, 2014, Jane Anderson, a physician assistant, diagnosed sprain/strain to the knee and leg, listed the date of injury as April 22, 2014, and released appellant to return to work on a sit down basis only. In a duty status report of the same date, Ms. Anderson checked a box indicating that this injury was due to his occupation.

On April 30, 2014 appellant was seen by William Morris, a nurse, who diagnosed right knee sprain. Mr. Morris noted that appellant injured his right knee on April 22, 2014 and was seen by Ms. Anderson on that date. On May 9, 2014 he diagnosed sprain/strain of the right knee and tear, lateral cartilage/meniscus of knee.

On May 2, 2014 appellant was seen by Dr. Rick Garrels, a physician Board-certified in occupational medicine, who diagnosed sprain/strain of the right knee and released him to return to work on a modified basis, sit down work only. Dr. Garrels noted that appellant twisted his right knee while descending stairs, and listed the date of injury as April 22, 2014. He indicated in a June 26, 2014 report that appellant also had a lateral cartilage tear/meniscus of knee. Dr. Garrels noted that surgery was delayed to get proper clearance from appellant's cardiologist.

In a May 7, 2014 report, Dr. Waqas M. Hussain, a Board-certified orthopedic surgeon, discussed appellant's history as feeling a pop in his right knee on April 22, 2014 while delivering mail. He noted that he reviewed x-rays of the right knee, which showed minimal hypertrophic spurring without significant medical or lateral joint space narrowing. Dr. Hussain noted that it was difficult to assess patellofemoral joint space narrowing. He also noted that he reviewed a magnetic resonance imaging scan of the right knee which demonstrated degenerative cyst in the lateral femoral condyle. Dr. Hussein noted a small osteochondral defect in the medial femoral condyle with cartilage changes and that the medial meniscus showed a tear of the posterior horn. He diagnosed with right knee pain, mechanical symptoms with right knee arthritis, and a tear of the medial meniscus. Dr. Hussein administered an injection of 40 milligrams of Kenalog. He recommended physical therapy, rest, ice, elevation, compression, activity modification, and oral medication for pain control. Dr. Hussein gave appellant a prescription for a cane at his request. He noted that appellant should continue with a desk or seated job only.

Ms. Anderson saw appellant again on May 29, 2014 and at that time she listed diagnoses of sprain/strain right knee and tear of the lateral cartilage/meniscus of the knee. She released him to return to work on a modified basis.

Appellant also submitted progress notes from physical therapists dated from December 20, 2013 through May 30, 2014.

On June 6, 2014 OWCP received a request for authorization of right knee arthroscopy.

In July 16 and 18, 2014 reports, Dr. Geeta Mahadevia, a physician specializing in occupational medicine, diagnosed sprain/strain of appellant's right knee; and tear, lateral cartilage/meniscus of knee. She released him to return to work light duty.

By decision dated July 29, 2014, OWCP denied appellant's claim as the medical evidence did not demonstrate that the claimed medical condition was causally related to the established employment-related event.

In a July 31, 2014 report, Dr. Garrels diagnosed sprain/strain of the right knee and tear of the lateral cartilage/meniscus of knee. In an August 15, 2014 report, he noted that appellant had left knee surgery on July 7, 2014 and was doing very well, and that he would see Dr. Hussain in August 2014 to address the right knee. Dr. Garrels listed diagnoses of status post left knee partial meniscectomy and right knee pain.

On August 28, 2014 appellant requested review of the written record. Also, he resubmitted numerous documents by Ms. Anderson, which now contained an illegible initial. In one of these reports, the April 22, 2014 report by Ms. Anderson, there is a handwritten indication that there was a direct causal relationship between the onset of the right knee pain and going down the step and feeling the pop. This entry on the report is followed by an illegible initial or signature.

In a letter received by OWCP on September 4, 2014, appellant described the circumstances of the employment incident and noted that he was seen in the occupational health clinic about 15 minutes after the injury. He argued that Dr. Garrels had now signed all the documents, and therefore the documents establish a causal relationship between his diagnosed conditions and the employment incident. Appellant also submitted additional physical therapy notes.

In a March 10, 2015 decision, the hearing representative affirmed the July 29, 2014 decision.

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.[3]

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

[3] *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

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.[4] 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.[5]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[6] The medical evidence required to 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.[7]

ANALYSIS

The Board finds that appellant has failed to meet his burden of proof establishing a right knee injury causally related to an April 22, 2014 employment incident. OWCP has accepted that the employment incident occurred as alleged. Appellant has submitted evidence that he was diagnosed with sprain/strain of the right knee and tear of the lateral cartilage/meniscus of the knee. However, his claim was denied because he failed to submit medical evidence establishing a causal relationship between the accepted incident of employment and the medical diagnosis.

Dr. Mahadevia diagnosed sprain/strain of the right knee and tear, lateral cartilage/meniscus of knee, but she did not address causal relationship. Dr. Hussain discussed appellant's history and noted right knee pain and mechanical symptoms with right knee arthritis and a tear of the medial meniscus. However, he did not make a supportive statement on causal relationship. As such, these opinions are insufficient to establish causal relationship.[8]

Dr. Garrels diagnosed sprain/strain of the right knee on May 2, 2014, and on June 26, 2014 also diagnosed a lateral cartilage tear/meniscus of the knee. Appellant had reports that he had told Dr. Garrels that he had twisted his right knee coming down stairs on April 22, 2014. Although Dr. Garrels' reports generally support causal relationship, he did not make an affirmative statement with regard to causal relationship and support it by adequate medical rationale explaining the basis of the relationship. He did not explain the process by which

[4] *See Elaine Pendleton,* 40 ECAB 1143 (1989).

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

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

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

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

appellant's walking down stairs on April 22, 2014 would have caused or contributed to the diagnosed condition. The Board notes in this regard that medical rationale is especially important to explain why this incident caused appellant's right knee injury, as the evidence of record also indicates that he has a similar left knee condition, for which he underwent surgery on July 7, 2014. As such, Dr. Garrels' reports are insufficient to meet appellant's burden of proof.[9]

Appellant also submitted multiple reports by physical therapists, physician assistants, and an advanced practice nurse. These reports do not constitute probative medical opinion evidence as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.[10] Appellant argues that Dr. Garrels initialed these reports. The Board has held that reports lacking proper identification do not constitute probative medical evidence.[11] As the initials are illegible, this evidence is not probative to the underlying medical issue. Furthermore, even had the reports contained an identifiable signature, the report must still explain the process by which appellant's particular work duties caused or contributed to his diagnosed condition.[12]

A medical diagnosis and an opinion on causal relation must be based on rationalized medical opinion evidence.[13] A physician must accurately describe appellant's work duties and medically explain the process by which these duties would have caused or aggravated his condition.[14] 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 his belief that the condition was caused by his employment is sufficient to establish causal relationship.[15] Because he has not provided medical opinion evidence clearly explaining how his accepted employment incident resulted in a specific medical diagnosis, thereby resulting in an employment injury, he failed to meet his 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.

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[9] *J.S.*, Docket No. 14-818 (August 7, 2014).

[10] *L.B.*, Docket No. 13-1253 (issued September 18, 2013) (physician assistants, physical therapists, physical therapy assistants, and nurse practitioners do not qualify as physicians under FECA and therefore their medical reports do not qualify as probative medical evidence supportive of a claim for federal workers' compensation, unless such medical reports are countersigned by a physician). *See* 5 U.S.C. § 8101(2) (defines the term physician as used in FECA); *see also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

[11] *M.R.*, Docket No. 12-1136 (issued December 5, 2012).

[12] *Supra* note 8.

[13] *M.E.*, Docket No. 14-1064 (issued September 29, 2014).

[14] *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to claimant's condition, with stated reasons by a physician). *See also V.S.*, Docket No. 14-2028 (issued June 3, 2015).

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

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right knee injury causally related to an April 22, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 10, 2015 is affirmed.

Issued: December 9, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board