

**United States Department of Labor
Employees' Compensation Appeals Board**

J.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Denver, CO, Employer**

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**Docket No. 14-2051
Issued: February 13, 2015**

Appearances:
Kevin C. Flesch, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 29, 2014 appellant, through counsel, filed a timely appeal from a July 10, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 has met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty.

FACTUAL HISTORY

On February 20, 2014 appellant, then a 72-year-old mail processing clerk, filed a traumatic injury claim alleging that on September 26, 2013 she sustained a right knee meniscus tear in the performance of duty. She alleged that she slipped on the pavement and landed on her

¹ 5 U.S.C. § 8101 *et seq.*

right knee in a kneeling position as she was sweeping mail at work. Appellant used leave without pay from September 27 through 29, 2013 and stopped work again on December 19, 2013.

By letter dated February 27, 2014, OWCP notified appellant that no evidence had been received in support of her claim and advised her of the type of evidence needed to establish her claim.

In a February 20, 2014 statement, appellant advised that she was working on a machine sweeping mail when she slipped and hit her right knee on the pavement. She noted that her right knee swelled that night and that the pain was intolerable. Appellant stated that she was taken to an urgent care facility where she was diagnosed with tendinitis. She related that she was later diagnosed with a torn meniscus of the right knee, for which she underwent surgery. Appellant alleged that she was unaware that she had to file a claim until her insurance provider advised her that workers' compensation was responsible for her claim.

By letter dated March 5, 2014, the employing establishment controverted the claim because appellant filed her claim more than 30 days after the date of injury.

Appellant submitted medical evidence in support of her claim. In an October 2, 2013 urgent care report, Dr. Sangeeta Clarke, an emergency medicine practitioner, advised that appellant was experiencing right foot swelling that began one week prior. She noted that appellant worked at the post office and was on her feet for her entire shift. Appellant diagnosed achilles bursitis/tendinitis.

In a December 24, 2013 emergency room report, Dr. Homi Behram Kapadia, Board-certified in emergency medicine, diagnosed knee strain and advised appellant to elevate and ice her knee. In a December 24, 2013 report, Dr. Ross Goldstein, a Board-certified diagnostic radiologist, advised that appellant was experiencing right knee pain. He advised that a right knee x-ray revealed mild right knee osteoarthritis and no acute bone abnormality. In another December 24, 2013 diagnostic report, Dr. Goldstein advised that an ultrasound of the lower extremity revealed a right popliteal fossa cyst and no deep vein thrombosis.

In a January 3, 2014 report, Dr. Jennifer Arnold, Board-certified in family medicine, noted that appellant complained of knee and leg pain, joint stiffness, and swelling. She advised that appellant related that her moderate right knee pain began approximately 15 days earlier without injury. Dr. Arnold noted that appellant had been off work since December 19, 2013 and was set to return the next day, but appellant did not feel she was capable. On physical examination she noted that appellant's gait was affected by a right leg limp and that appellant experienced pain with range of motion in the right knee.

On January 10, 2014 Dr. Frank Crnkovich, a Board-certified diagnostic radiologist, advised that a right knee magnetic resonance imaging (MRI) scan revealed vertical through and through tearing of the posterior horn medial meniscal root attachment with extension of tearing to the posterior horn and into the extruded body segment of the medial meniscus.

In a January 15, 2014 report, Dr. Wayne Gersoff, a Board-certified orthopedic surgeon, advised that appellant complained of right knee pain for the past three weeks. He further advised

that she related that she did not remember a specific injury or trauma. Examination revealed mild effusion, tenderness, and pain along the medial joint line. Dr. Gersoff noted that an MRI scan showed degenerative tearing of the medial meniscus. He recommended an arthroscopy. In a disability status report from that same visit, Dr. Gersoff advised that appellant would be unable to work for four to six weeks following her surgery. He also advised that leading up to her surgery she would be restricted in the amount of time that she could stand, walk, climb, squat, and kneel. In a January 21, 2014 surgery report, Dr. Gersoff noted performing a right knee arthroscopy and partial medial meniscectomy. Appellant also provided postoperative treatment records from him that noted the course of her recovery. OWCP also received hospital treatment and physical therapy records.

In a March 13, 2014 statement, appellant detailed the treatment that she underwent in relation to her right knee. She noted that she did not file her claim until she was informed by her insurance provider that her condition could be the result of the fall she sustained on September 26, 2014 and would therefore be a workers' compensation claim. In a March 24, 2014 statement, appellant's coworker advised that he and appellant were working on the same machine on the day of the injury. He noted that he did not see the injury, but appellant advised him that she injured her right knee when she slipped on the concrete floor.

By decision dated April 8, 2014, OWCP denied appellant's claim because medical evidence was insufficient to establish that the work incident caused the diagnosed condition.

On May 8, 2014 appellant, through her attorney, requested reconsideration.² In support of the request, she provided an April 21, 2014 report from Dr. Arnold who advised that appellant had an injury that occurred at work on September 26, 2013 slipped and fell on a concrete floor. Dr. Arnold indicated that this resulted in a right knee hyperflexion and was a common event "in which a person tears a meniscus." She explained that an urgent care center told appellant on October 2, 2013 that she had tendinitis but a later MRI scan confirmed a meniscus tear. Dr. Arnold noted that appellant underwent a right knee medial meniscectomy and was improving but was still unable to work full time.

In an April 25, 2014 report, Dr. Gersoff advised that he had reviewed all of appellant's medical records. He noted that, prior to her fall, appellant was not having pain or discomfort in her right knee. Dr. Gersoff stated that appellant started having pain after the fall. After an MRI scan revealed a tear of the posterior horn of the medial meniscus, surgery was performed on January 21, 2014. Regarding the cause of her meniscus injury, Dr. Gersoff stated:

"It is certainly possible that the meniscus tear may have eventually broken down at this point in time. However, if [appellant] had not fallen she would not have developed knee problems and symptoms requiring further evaluation that

² Appellant initially requested a telephone hearing but on May 14, 2014, she withdrew her hearing request. On May 20, 2014 OWCP accepted her request for withdrawal of the hearing.

ultimately led to her needing a surgical intervention. I therefore do think that there is a relationship between her fall and her knee injury.”

Appellant also provided an April 4, 2014 duty status report from Dr. Gersoff noting appellant’s restrictions and a June 4, 2014 treatment report in which he advised that appellant was improving and able to work with less restrictions. Dr. Gersoff anticipated that he would release her from all restrictions in four weeks.

By letter dated July 10, 2014, OWCP denied modification of its April 8, 2014 decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,³ including that he or she is an “employee” within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.⁴ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁶

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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

Appellant claimed that she injured her right knee when she slipped on the pavement at work. The evidence supports that the claimed incident occurred as alleged. Therefore, the Board finds that the first component of fact of injury is established. However, the medical evidence is

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁴ *R.C.*, 59 ECAB 427 (2008).

⁵ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *T.H.*, 59 ECAB 388 (2008).

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

insufficient to establish that the employment incident on September 26, 2013 caused appellant's right knee injury.

In his April 25, 2014 report, Dr. Gersoff advised that appellant was not having pain or discomfort in her right knee prior to her fall. He opined that "it is certainly possible that the meniscus tear may have eventually broken down at this point in time. However, if [appellant] had not fallen she would not have developed knee problems and symptoms requiring further evaluation that ultimately led to her need for surgical intervention." This report is insufficient to discharge appellant's burden of proof. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.⁸ Dr. Gersoff did not provide medical rationale to explain how the work incident caused appellant's meniscus tear. As noted, rationalized medical opinion evidence is required to establish causal relationship. Dr. Gersoff also failed to explain the apparent inconsistency with his earlier January 15, 2014 report in which he advised that appellant related that she did not remember a specific injury or trauma.⁹ Other reports by Dr. Gersoff do not address causal relationship and, therefore, are also insufficient to discharge appellant's burden of proof.

In her January 2, 2014 report, Dr. Arnold, noted that appellant complained of knee and leg pain, joint stiffness, and swelling. She advised that appellant complained of moderate right knee pain that began approximately 15 days earlier without injury. This report makes no reference to the September 26, 2013 incident and thus does not support causal relationship. This is in contrast to Dr. Arnold's April 21, 2014 report in which she advised that appellant had an injury at work on September 26, 2013 when she slipped and fell on a concrete floor. Dr. Arnold indicated that this caused a right knee hyperflexion and that this was a common event "in which a person tears a meniscus." This report is insufficient to meet appellant's burden of proof as Dr. Arnold does not explain why her more contemporaneous January 2, 2014 report made no mention of the September 26, 2013 incident as a cause of appellant's conditions. It also fails to meet appellant's burden because she did not provide medical rationale explaining the reasons why the September 26, 2013 work incident caused or contributed to a meniscal tear. There are no other reports from Dr. Arnold which address whether the September 26, 2013 employment incident contributed to appellant's right knee condition.

Other medical evidence of record is insufficient to establish the claim because such evidence does not specifically address whether the September 26, 2013 work incident caused or contributed to a diagnosed medical condition.¹⁰ For example, in her October 2, 2013 report, Dr. Clarke advised that appellant was experiencing right foot swelling that began one week prior. She noted that appellant works at the post office and is on her feet for her entire shift. However, Dr. Clarke did not specifically indicate whether any work duties were a cause of appellant's foot condition nor did she diagnose a right knee condition. Likewise, Dr. Kapadia's report and the

⁸ *Thomas D. Petrylak*, 39 ECAB 276 (1987).

⁹ *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

¹⁰ *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

reports of diagnostic testing do not address whether the September 26, 2013 work incident contributed to a diagnosed medical condition. Thus, these reports are insufficient to discharge appellant's burden of proof.

The Board also notes that appellant submitted physical therapy reports. However, physical therapists are not considered physicians as defined under FECA.¹¹ Thus, records from physical therapists are insufficient to establish a claim.¹²

On appeal appellant's attorney argues that OWCP abused its discretion by dismissing the physician's opinions that the injury was work related. For the reasons set forth above, the Board finds that the medical evidence did not include the necessary medical reasoning explaining how the work incident caused or contributed to her diagnosed medical conditions.

Consequently, appellant has submitted insufficient medical evidence to establish her claim. As noted, she has not submitted reasoned medical evidence, based on an accurate factual background, explaining why the September 26, 2013 work incident caused or contributed to a diagnosed medical condition. Because appellant has not provided such medical opinion evidence in this case, she has failed to meet her burden of proof.

Appellant may submit new evidence or argument as part of a formal 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 10.607.¹³

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a traumatic injury in the performance of duty on September 26, 2013.

¹¹ Under FECA, a "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2).

¹² *Allen C. Hundley*, 53 ECAB 551 (2002); *Lyle E. Dayberry*, 49 ECAB 369 (1998); *D.F.*, Docket No. 12-347 (issued June 18, 2012). 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).

¹³ Appellant submitted new evidence to OWCP after issuance of the July 10, 2014 decision. However, the Board lacks jurisdiction to review new evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the July 10, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2015
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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