United States Department of Labor
Employees' Compensation Appeals Board

F.S., Appellant	)	
and	)	**Docket No. 15-30**
	)	**Issued: February 20, 2015**
DEPARTMENT OF JUSTICE, FEDERAL CORRECTIONAL COMPLEX, Coleman, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 7, 2014 appellant filed a timely appeal from a June 12, 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.

ISSUE

The issue is whether appellant has established a left knee injury in the performance of duty on October 21, 2011.

FACTUAL HISTORY

On October 24, 2011 appellant, then a 34-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on October 21, 2011 she sustained a left knee injury. She

[1] 5 U.S.C. § 8101 *et seq.*

stated that, while in the performance of duty, she stepped on a crack in the sidewalk and twisted her left knee.[2]

In a Form CA-16 (authorization for examination and/or treatment) dated October 21, 2011, the employing establishment authorized medical treatment at Ocala Regional Medical Center. An "emergency physician record" dated October 21, 2011 noted a prior history of a torn meniscus. The physician provided a history that appellant had twisted her left knee and diagnosed knee sprain/strain.[3] A discharge summary of the same date from Dr. Steven Gelovich, a Board-certified in family medicine, indicated that appellant should work sedentary duty.

Appellant underwent left knee surgery on November 8, 2011. Dr. Derek Farr, an attending osteopath, described the surgery as left knee arthroscopy with partial medial meniscectomy and chondroplasty two compartments. The record contains another emergency physician record dated November 13, 2011 indicating appellant reported postoperative knee pain. According to OWCP, appellant had a prior claim for a left knee injury on September 5, 2010 while breaking up an inmate altercation, and a November 30, 2010 prior claim accepted for left knee sprain and lateral/medial meniscus tear.

By decision dated October 2, 2013, OWCP denied the claim for compensation. It found appellant had not submitted sufficient factual or medical evidence to establish the claim.

Appellant requested a review of the written record by letter postmarked November 5, 2013. By decision dated November 29, 2013, OWCP denied the request on the grounds that it was untimely filed.

On December 23, 2013 appellant requested reconsideration of her claim.[4] She stated that she had reinjured her knee on October 21, 2011 and sought medical treatment. Appellant stated that she had told Dr. Farr of her injury but he noted she was having surgery in two weeks and he would continue to treat her under the old claim. She stated that she thought all of her left knee treatment would be taken care of and now she did not understand why she was "facing a claim from workers' compensation" for medical costs. By report dated November 17, 2011, Dr. Farr provided results on examination. He diagnosed left knee meniscus tear and chondromalacia patella.

By decision dated June 12, 2014, OWCP reviewed the case on its merits. It denied the claim on the grounds that the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[5] The

[2] These claims are not administratively linked to the current claim.

[3] The signature on the form report is illegible.

[4] Appellant also requested a review by the Board. In an order dated April 14, 2014, the Board dismissed the appeal, noting that she had requested the appeal be withdrawn. Docket No. 14-462 (issued April1 14, 2014).

[5] 5 U.S.C. § 8102(a).

phrase "sustained while in the performance of duty" in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of an in the course of employment."[6] An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.[7] 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 which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and, generally, this can be established only by medical evidence.[8]

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion.[9]

ANALYSIS

In the present case, appellant filed a claim for a left knee injury on October 21, 2011 when she stepped on a crack in the sidewalk and twisted her knee. Although the current case file has not been administratively linked with any other case file, the record indicated that she had a prior claim accepted for a left knee lateral/medial meniscus tear. Appellant underwent a partial left knee meniscectomy surgery on November 8, 2011.

The record indicates that appellant was treated on October 21, 2011. Dr. Gelovich provided a discharge summary, and there is a physician's emergency room report as well. As noted above, to establish a left knee sprain/strain or other diagnosed condition as causally related to the October 21, 2011 incident, appellant must submit rationalized medical opinion evidence. In this case the medical evidence is not sufficient to meet her burden of proof. The hospital reports dated October 21, 2011 do not provide a clear history of the employment incident. Moreover, there is no opinion relating a diagnosed condition to the employment incident. The additional medical evidence of record, including reports from Dr. Farr, does not discuss the issue. The Board finds that appellant did not meet her burden of proof in this case.

On appeal appellant states that she felt her left knee injury had been covered and now there were unpaid medical bills. The Board does not have jurisdiction with respect to any prior left knee claims. The Board notes that the employing establishment issued a Form CA-16 on October 21, 2011. Where an employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related

[6] *Valerie C. Boward*, 50 ECAB 126 (1998).

[7] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

[8] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[9] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim.[10] The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP.[11] In this case, OWCP made no findings with respect to the October 21, 2011 Form CA-16. On return of the case record, it should properly address the issue.[12]

CONCLUSION

The Board finds that appellant has not established an injury in the performance of duty on October 21, 2011. On return of the case record, OWCP should consider the Form CA-16 issued in this case.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 12, 2014 is affirmed.

Issued: February 20, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[10] *Tracey P. Spillane*, 54 ECAB 608 (2003).

[11] *See* 20 C.F.R. § 10.300(c).

[12] *See S.L.*, Docket No. 14-1591 (issued December 24, 2014).